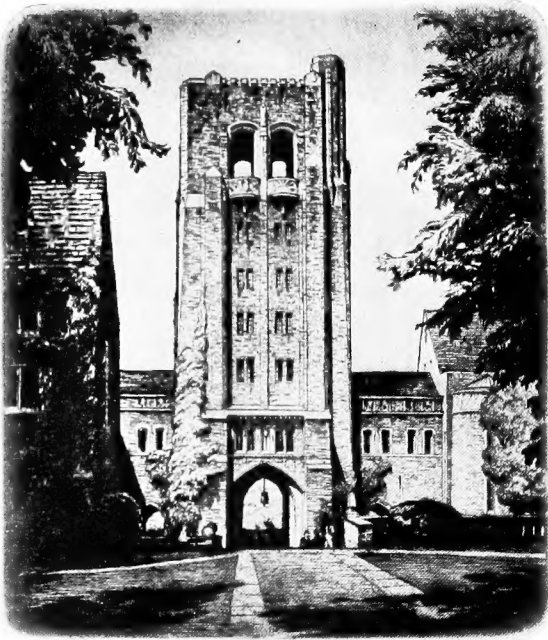


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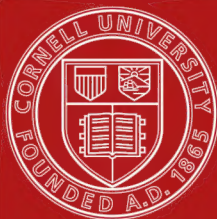
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DIGEST
OF
THE LAW OF TAX TITLES,
AND
FORM BOOK,
EMBRACING
ALL PRACTICAL TAX FORMS IN ALL DEPARTMENTS OF LAW
FOR THE USE OF
TOWN, COUNTY AND STATE OFFICERS,
ADAPTED TO THE NEW ENGLAND STATES,
ALSO CONTAINING
(With Notes, Directions and Citations,)
FORMS OF PROCEEDINGS,
FOR TOWN OFFICERS, SCHOOL COMMITTEES, TRIAL JUSTICES,
CORONERS, SHERIFFS, CONSTABLES AND
COUNTY COMMISSIONERS,
ADAPTED TO
THE REVISED STATUTES OF MAINE,
WITH AN
APPENDIX,
CONTAINING LEGAL FORMS FOR BUSINESS MEN.

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ERRATA.

Page 16, last word of section 16, for *Const.* read *Comst.*

Page 17, in second line, for *Yates* read *Yeates*.

Page 160, in third line of page, read *their* for *this*.

Page 237, in seventh line omit the word *not*.

Page 243, in last line for *seventy* read *eighty-four*.

Page 251, in first and third line under diagram, for *give* read *gave*; at the end of the sixth line under diagram insert the word *of*.

Page 280, for chapter 55 read 65.

Page 342, in sixth line from the bottom, for *announce* read *answer*.

Page 379, first line, for *same* read *some*.

Page 415, in first line of remarks after bearer add *or order*.

Page 434, in twenty-first line after *legal* read *costs*.

Page 436, in twenty-fifth line after the word *return* omit the word *to*.

Page 437, in sixth line for *unrepresented* read *unpresented*.

Page 438, in third line omit the letters *C. D.*

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AMERICAN REPORTS CITED.

NAME OF REPORTER.	ABBREVIATION.	STATE.
Aikens		Vermont.
Alabama.....	Ala.....	Alabama.
Allen		Massachusetts.
Arkansas.....	Ark	Arkansas.
Barbour.....	Barb.....	New York.
Beasley, Ch.....		New Jersey.
Bibb.....		Kentucky.
Blackford.....	Blackf. & Black.....	Indiana.
Bland.....		Maryland.
Brockenbrough.....	Brock.....	U. S. Circuit.
California.....	Cal.....	California.
Casey.....		Pennsylvania.
Cheves.....		South Carolina.
Comstock.....	Comst	New York.
Connecticut.....	Conn.....	Connecticut.
Cranch		U. S. Sup. Court.
Cowen.....	Cow.....	New York.
Cushing.....	Cush.....	Massachusetts.
Cushman.....	Cush.....	Mississippi.
Denio.....		New York.
Douglass.....	Dougl.....	Michigan.
English.....	Eng	Arkansas.
Fairfield.....	Fairf.....	Maine.
Foster		New Hampshire.
Florida.....		Florida.
Gibbs.....		Michigan.
Gilman.....	Gilm.....	Illinois.
Gill & Johnson.....	Gilm & J.....	Maryland.
Gilmer.....	Gilm.....	Virginia.
Gill.....		Maryland.
Gray.....		Massachusetts.
Grattan.....	Gratt.....	Virginia.
Greenleaf.....	Green. Greenlf.....	Maine.
Greene.....	G.....	Iowa.
Harrington.....	Harring.....	Delaware.

NAME OF REPORTER.	ABBREVIATION.	STATE.
Harris	Har.....	Pennsylvania.
Hammond.....	Ham.....	Ohio.
Henning & Munford.....	Hen. & Munf.....	Virginia.
Hill.....		New York.
Hill.....		South Carolina.
Howard.....	How.....	U. S. Sup. Court.
Illinois.....	Ill.....	Illinois.
Indiana.....	Ind.....	Indiana.
Iowa.....		Iowa.
Iredell.....	Ired.....	North Carolina.
Johnson.....	Johns.....	New York.
Johnson's Chancey.....	Johns. Ch.....	New York.
Kelley.....		Georgia.
Leigh.....		Virginia.
Louisiana Annual R.....	La. Ann.....	Louisiana.
Louisiana.....	La.....	Louisiana.
Marshall (A. R.).....	A. R. Marsh.....	Kentucky.
Maine.....	Me.....	Maine.
Maryland.....	Md.....	Maryland.
Mason.....		U. S. 1st Circuit Court.
Metcalf.....	Met.....	Massachusetts.
M'Lean.....	McL.....	U. S. 7th Circuit Court.
Minnesota.....	Minn.....	Minnesota.
Minor.....	Min.....	Alabama.
Michigan.....	Mich.....	Michigan.
Missouri.....	Mis.....	Missouri.
Mississippi.....	Miss.....	Mississippi.
Monroe.....	Mon.....	Kentucky.
Monroe, Benjamin.....	B. Mon.....	Kentucky.
Nevada.....	Nev.....	Nevada.
New Hampshire.....	N. H.....	New Hampshire.
Ohio.....		Ohio.
Paige.....		New York.
Peters.....	Pet.....	U. S. Sup. Court.
Pickering.....	Pick.....	Massachusetts.
Randolph.....	Rand.....	Virginia.
Rhode Island.....	R. I.....	Rhode Island.
Scammon.....	Scam.....	Illinois.
Sergeant & Raule.....	Serg. & Raule—S. & R....	Pennsylvania.
Smedes & Marshall.....	Smedes & M.....	Mississippi.
Texas.....		Texas.
Vermont.....	Vt.....	Vermont.
Vroom.....		New Jersey.
Washington.....	Wash.....	Virginia.
Wheaton.....	Wheat.....	U. S. Sup. Court.

NAME OF REPORTER.	ABBREVIATION.	STATE.
Watts.....		Pennsylvania.
Watts & Sergeant.....	Watts & Serg.—W. S.....	Pennsylvania.
Wendell.....	Wend.....	New York.
Wisconsin.....	Wisc.....	Wisconsin.
Wright.....		Ohio.
Yeates.....		Pennsylvania.
Zabriskie.....	Zabr.....	New Jersey.

BRITISH REPORTS CITED.

REPORTERS.
 Burrow.
 East.
 Term Reports.

MISCELLANEOUS WORKS CITED.

NAME OF WORK.	ABBREVIATION.
Blackstone's Commentaries.....	Bl. Com.
Blackwell on Tax Titles.....	Black. on Tax Titles.
Brown's Legal Maxims.....	Brown's Max.
Davis's Criminal Justice.....	Davis' Crim. Jus.
Chitty's Pleadings.....	Chitty Pl.
Cruise's Digest.....	Cru. Dig.
Greenleaf's Evidence.....	Green. Ev.
Kent's Commentaries.....	Kent Com.
Revised Statutes of Maine.....	R. S. of Me.
Russell on Crimes.....	Rus. on Crimes.
Starkie's Evidence.....	Stark Ev.
Story's Equity Jurisprudence.....	Story Eq.

DIGEST AND SUMMARY.

CHAPTER I.

THE TAXING POWER.

1. Taxes are defined to be burdens or charges imposed by the legislative power of a State, upon persons or property, to raise money for public purposes. 6 Johns. 92 ; 11 id. 77 ; Bleecker v. Ballou, 3 Wend. 263.

2. In a narrower sense, and as opposed to "excise," a tax is "a charge apportioned either among the whole people of the State, or those residing within certain districts, municipalities or sections." Oliver v. Wash. Mills, 11 Allen.

3. There is a manifest distinction between the taxing power and that of the eminent domain. Both, in effect, appropriate private property to public uses. They differ only in degree.—But taxation exacts money from individuals, as their share of a public burden ; and the tax-payers, according to the theory of our system, receives a just compensation in the benefits conferred by the government, in the proper application of the tax. Booth v. Woodbury, 32 Conn. 118.

4. When, however, property is appropriated by virtue of the right of eminent domain, it is taken, not as the owner's share of a public burden, but as so much more than his share. Special compensation is, therefore, to be made. The taxing power has no existence in a state of nature. It is the creature of civil society. Government begets its necessity. There must be interwoven in the frame of every government a general power of taxation. Money is, with propriety, considered as the vital principle of the body politic ; as that which sustains its life and motion, and

enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. Blackwell on Tax Titles, page 2.

5. It may, therefore, be laid down as a principle of universal constitutional law, that the power to levy and collect taxes is an incident of sovereignty, without which no government could exercise the powers expressly delegated to it. *Ib.*

6. In the Federal Constitution there is an express grant to Congress, of the power to "levy and collect taxes." The State Constitutions do not confer this power upon the Legislature by any specific clause; (this statement does not apply to all the States, Massachusetts contains an express grant to the Legislature of the power). It passes under the general designation of "legislative power." It is implied, upon the principle, that a grant of legislative, judicial, and executive powers, carries with it, by construction, all the means necessary for their execution. It is also implied from the limitations to be found in the several State constitutions, as to the manner of levying taxes. *Ib.*

7. The power of taxation operates upon all persons and property within the territorial jurisdiction of a State. There is no limitation upon the power of the Legislature, as to the amount or objects of taxation. The interest, wisdom, and justice of the representative body, and its relation with its constituents, furnish the only security against unjust and excessive taxation. These principles are fully sustained by the authorities. Such is the nature, necessity, and extent of the taxing power. *Providence Bank v. Billings*, 4 Pet. 514; *Brewster v. Hough*, 10 N. H. 138; *Mack v. Jones*, 1 Foster, 393. See *Lowell v. Oliver*, 8 Allen, 247; *People v. Hawes*, 34 Barb. 69; *Blanding v. Burr*, 13 Cal. 343; *Soens v. Racine*, 10 Wisc. 271; *Oliver v. Wash. Mills*, 11 Allen, 268.

8. The power to levy a tax properly belongs to the legislative power. The collection of it involves the exercise of judicial and executive functions. The legislature levy the tax—direct that a

demand shall be made on the owner of the land for the tax charged against it, and if payment is refused, authorize the collector to seize the body or goods of the delinquent, and in case satisfaction is not had in one or the other of these modes, power is conferred upon the collector to sell and convey the land itself. Now before the power to sell the land can exist under the law, the fact of the levy and non-payment of the tax, the demand, and return of no goods, or that the body cannot be found, must exist. These facts must be ascertained to exist before the power of sale attaches. Whether the power to decide the question of delinquency is vested by law in the regularly constituted judicial tribunals, or in those specially instituted for that purpose, or in the collector himself, can make no kind of difference; it is the exercise of judicial power, and the officer who sells performs an executive function; as that, in point of fact, the legislative, judicial, and executive departments of the government, all aid in the execution of the taxing power. Blackwell on Tax Titles, page 26.

9. It is undoubtedly a principle of natural justice, that every person shall have an opportunity of being heard before he is condemned; and to a hearing every tax-payer is entitled—but not before the ministerial officers of the law. They act at their peril in selling the land of the person assessed, where the taxes have been paid, or where they have not strictly complied with the law of the land; and he acts at his peril in determining the question whether he will redeem or contest the validity of the sale. If he adopts the latter course, then, and not till then, is he entitled to be fully heard in his defence, in the judicial tribunals of the country. *Willard v. Wetherbee*, 4 N. H. 118.

CHAPTER II.

OF THE NATURE OF THE POWER TO SELL LAND FOR THE NON-PAYMENT OF TAXES, AND OF THE STRICTNESS REQUIRED IN SUCH SALES.

1. The power to impose a tax upon real estate, and sell it where there is a failure to pay the tax, is a high prerogative, and should never be exercised in doubtful cases. It is a naked power, which, in this instance may be defined to be a power operating upon an estate, in which the officer who executes it, has no manner of interest, and over which he has no control other than that which the law has expressly delegated to him. *Sharp v. Speir*, 4 Hill, 76; *Williams v. Peyton*, 4 Wheat. 77; *Varick v. Tallman*, 2 Barb. 113; *Clarke v. Courtney*, 5 Pet. 319.

2. It is a statutory power, depending alone upon the will of the sovereign, and not upon the consent of the owner. The statute creates the power, selects the agent to execute it, and prescribes the formalities which shall attend its execution. *Doughty v. Hope*, 3 Denis, 595; *Varick v. Tallman*, 2 Barb. 113. Judge Sharkey thus defines a statutory power: "A power derived exclusively and directly from a statute, without any other agency, or the action of any judicial tribunal." *Natchez v. Minor*, 10 Smedes & M. 246.

3. It is special as contradistinguished from a general authority. The officer to whom it is delegated has no general power to sell land for the taxes charged against it, but simply a special one, to sell in the particular case mentioned in the statute creating the power. *Williams v. Peyton*, 4 Wheat. 77; *Striker v. Kelley*, 2 Denio, 330.

4. It will, therefore, be perceived, that the officer intrusted with the power of sale exercises a naked, statutory, and special

authority, depending alone upon the high prerogative of the State, and the letter of the law, for its support. Blackwell on Tax Titles, page 33.

5. The validity of a tax sale depends upon the authority of the officer to sell, and upon the fairness of the transaction. It would be going too far to say, that the officer, selling land with or without authority, could by his mere conveyance transfer the title of the rightful proprietor. He must act in conformity with the law, from whence his power is derived, and the purchaser is bound to inquire whether he has so acted. It is, therefore, held to be a condition precedent to the passing of the title at such sales, that all of the proceedings of the officers who have anything to do with the listing and valuation of the land, the levy and collection of the tax, the advertisement and sale of the property, the return, filing, or record of the proceedings, whether the acts are to be performed before or after the sale, must be in strict compliance with the statute authorizing the sale. *Stead's Executor v. Course*, 4 Cranch, 403; *Judevine v. Jackson*, 18 Vt. 470; *Early v. Doe*, 16 How. (U. S.) 610; *Sumner v. Sherman*, 13 Vt. 609; *Isaacs v. Wiley*, 12 Vt. 677; *Shimmin v. Inman*, 26 Me. 228; *Smith v. Bodfish*, 27 Me. 295; *Brown v. Veazie*, 25 Me. 362; *Farnum v. Buffum*, 4 Cush. 267; *Keene v. Houghton*, 19 Me. 368; *Cushing v. Longfellow*, 26 Me. 306; *Hobbs v. Clements*, 32 Me. 67; *Matthews v. Light*, 32 Me. 305; *Brown v. Smith*, 1 N. H. 36; *Brown v. Dinsmoor*, 3 N. H. 103; *Alvord v. Collin*, 20 Pick. 418.

6. So strict, indeed, are the decisions in reference to this class of sales, that it has been said that a tax deed is *prima facie* void. 4 Smedes & M. 628.

7. In this class of powers, the government, by its agents, acts in hostility to, and with the view of subverting the title of the citizen, for an alleged breach of its revenue regulations. Under such circumstances the presumption is, that the owner has violated no law—neglected no duty enjoined upon him, which shall have the effect of working a forfeiture of his estate. He waives nothing by silence, stands upon all of his rights, and is permitted

to insist upon a strict compliance with all of those conditions which the law has imposed upon its own agents, for their guide in the execution of the power. *Varick v. Tallman*, 2 Barb. 113.

8. The power of the officer to sell land for the non-payment of taxes by the owner, is a naked one, not coupled with an interest; and in all such cases, whether the power is general or special, the common law requires that every prerequisite to the exercise of the power, must precede it; that the agent must pursue the power, or his acts will not be sustained by it. Judge Scates, in *Hinman v. Pope*, 1 Gilm. 131, well remarks, that "this vigilance of the law upon naked powers, is a substitute for that vigilance which INTEREST always prompts in those who execute a power coupled with an interest."

9. The evident intention of the legislature in the enactment of this class of laws, is to coerce the payment of taxes from the unwilling, and at the same time to protect the rights of private ownership as guaranteed by the fundamental principles of our institutions. The former object is accomplished by the sale of the delinquent's lands; the latter by those conditions and forms, with which the officer is bridled and restrained in the execution of the power of the sale. A double—a general and particular—intent is thus manifested in all such laws, both of which should be sacredly respected, and carried out by the courts in construing them; the true principle applicable in all such cases being, that the private interest of the citizen is never to be sacrificed to a greater extent than is necessary to secure a public object of adequate importance; nor should the power be exercised in any other mode than that specially pointed out by the statute.—*Broom's Maxims*, Second London Edition, 1848, pp. 3, 4.

10. Where a statute creates a new power, and at the same time provides the means and mode of executing it, those to whom the power is entrusted can execute it only in the mode prescribed. 6 Mass. 44; 14 Mass. 289. This rule requires a rigid adherence to the directions and forms which the legislature have seen proper to lay down for the government of its agents. The power is purely arbitrary, and this furnishes a strong reason why it should

not be exercised in an arbitrary manner. If the forms required to be observed are once departed from, there is an end of all legal restraint, and the discretion of the officer is bounded by his will alone. This would be intolerable to a free people. No court would venture to sanction a doctrine which would operate to vest such an unbounded discretion in any officer. Discretionary power is contrary to the genius of our laws and institutions. To sustain a tax sale, where the officer, in the exercise of his discretion, has disobeyed the rule laid down by the statute for his government, is to transfer the legislative power of the State to the collector, and thus allow him to sell land for taxes, not in the manner prescribed by the written law, but according to his private notions of what is right, and would place at his discretion the property of every citizen of the State. *Register v. Bryan*, 2 Hanks, 17.

11. When a party claims title under a public law, he is not only bound to know the law, and give it a fair and reasonable construction, but he is bound to see that all of its substantial requirements have been complied with. *Denning v. Smith*, 3 Johns, Chap. 344.

The law has a two-fold object. It was not designed simply for the purposes of prescribing the authority of the officer to sell, "but also to give to purchasers full information of the terms upon which a title could be acquired to land sold for the non-payment of taxes." It was meant to put bidders at a tax sale upon inquiry, whether or not the land was offered for sale according to law. If they do not examine, and shall buy land exposed to sale for taxes against the law, they do so at their own risk; and it will be presumed against them, that they know that the deeds given under such circumstances, are made in violation of official duty and of the law. *Moore v. Brown*, 11 How (U. S.) 414.

12. Every person claiming title to real estate, is chargeable with notice of all defects apparent upon the face of his muniments of title. *Baltimore v. White*, 2 Gill & J. 444.

13. In tax titles, the constitutional provisions regulating the taxing power, the statute levying the tax, and prescribing the manner of enforcing its collection, and the acts of those to

whom the execution of the power is intrusted, are all essential links in the chain of title,—all of them are matters of record,—and the purchaser is bound to take notice of all omissions or irregularities, which have taken place in the proceedings under which he claims the estate. He is, therefore, to look to it at his peril. The maxim *caveat emptor* applies to him with great force. Black. on Tax Titles, page 50.

14. When a person claims an estate, purporting to be derived under a power, he must prove the existence of the power, and a compliance with all its requisitions. This rule pervades all classes of powers, and is universal in its application. Black. on Tax Titles, 53.

15. The act of every executive officer, from the president down to a town constable, is void where he has no authority, or proceeds contrary to the mode prescribed by the constitution and laws. Black. on Tax Titles, 53.

16. The officer is the agent of the law, the statute is his warrant of attorney, and he is bound to conform strictly to it.—It is a familiar rule of law, that a special authority must be strictly pursued. When such authority is prescribed by statute, and when in its exercise it operates to divest the citizen of his property, courts cannot be too sedulous in confining it within the boundaries which the legislature have thought fit to prescribe.—*Bowell v. Tuttle*, 3 Const. 401.

17. One judge remarks that the proceedings must be “strictly regular.” *Hughey v. Horrell*, 2 Ham. 231. Another, that “a strict compliance with all the prerequisites of the statute is considered necessary.” *Isaacs v. Wiley*, 12 Vt. 667; *Smith v. Bodfish*, 27 Me. 295. Another, that “great strictness is required and every substantial requisite of the law must be shown to have been complied with. *Blakeney v. Ferguson*, 3 Eng. 277; *Ronkendorff v. Taylor*, 4 Pet. 349. Another, that “it must appear that the provisions of law preparatory to, and authorizing such sale, have been punctiliously complied with.” *Brown v. Veazie*, 25 Me. 362; *Phillips v. Phillips*, 40 Me. 160. Another, that “a minute conformity to every particular of the several acts of the

assembly, is necessary to pass the title." *Young v. Martin*, 2 Yates, 312. Another, that without a "literal performance" of the requirements of the law, the deed is "mere waste paper."—*Bush v. Davison*, 16 Wend. 554. Another, that "the authority must be strictly pursued from the beginning to the end. If any material link in the chain be wanting, the whole proceeding will fall to the ground." *Doughty v. Hope*, 3 Denio, 599. A clear and strict compliance has always been held indispensable, even in regard to matters which, but for the statute, would appear to be of no importance. *Langdon v. Poor*, 20 Vt. 15. Another, that the person invested with the power to sell, "must pursue with precision the course prescribed by law, or his act is invalid." Again, the course prescribed "ought to be exactly observed." *Thatcher v. Powell*, 6 Wheat. 119. Another, that "a tax deed cannot be read in evidence, without proof that the substantial requirements of the law have been complied with." *Games v. Stiles*, 14 Pet. 322. Another, that "it is a condition precedent to the passing of any title, that the proceedings of the officer should be in strict and literal compliance with the requirements of the statute." *Judevine v. Jackson*, 18 Vt. 472. And another, that every requirement of the law, "having the semblance of benefit to the owner, must be strictly complied with." *Sharp v. Johnson*, 4 Hill, 99.

19. The principle fairly deducible from the entire field of discussion upon this class of powers, is, that every requirement of the law, whether substantial or merely formal in its character, and having the semblance of benefit to the owner, which the legislature have said shall attend the execution of the power, ought to be strictly observed by the officers intrusted with its execution, or no title will pass by the sale. *Blackwell on Tax Titles*, 61.

20. In *Isaacs v. Wiley*, 12 Vt. 677, the collector failed to give a bond as required by law, and for this defect in the proceedings, the sale was held void; the court remarking, "We hold the giving of a bond, and such a bond as the statute requires, to be indispensable to pass the title, not because we consider that the public or the landholders have any indirect interest even in the security which it affords, but because a strict compliance with *all* the

prerequisites of the statutes is considered necessary in this class of cases, in order to pass the title."

21. In *Brown v. Dinsmoor*, 3 N. H. 103, the question was whether, in listing the land for taxation, the name of the owner, or the description of the land, or both, should be inserted in the list. Such was the language of the statutes, that it was susceptible of either construction, and the court held, that the insertion of both the name and description was necessary.

CHAPTER III.

OF THE ONUS PROBANDI.

(THE BURDEN OF PROOF.)

1. In tax sales, a series of acts, preliminary in their character, are required by law to precede the execution of the power.— Each and every step, from the listing of the land for taxation, to the consummation of the title by the delivery of a deed to the purchaser, is a separate and independent fact. All of these facts, from the beginning to the end of the proceeding, must exist; and if any material link in the chain of title be wanting, the whole falls to the ground for want of sufficient authority to support it. *Blakeney v. Ferguson*, 3 Eng. 277; *Brown v. Veazie*, 25 Me. 362; *Games v. Stiles*, 14 Pet. 322; *Wright*, 53; *Moore v. Brown*, 11 How (U. S.) 414; *Allen v. Smith*, 1 Leigh, 231.

2. It is a general principle that the party who sets up a title must furnish the evidence to support it. *Williams v. Peyton's Lessee*, 4 Wheat. 77; *Brown v. Wright*, 17 Vt. 97.

3. The recitals in a tax deed are not evidence against the owner of the property, but the facts recited must be established by proof aliunde. The fact that they were regular must be proved, and the onus probandi rests, in all cases, upon the purchaser, or those claiming under him. He must show affirmatively, step by step, that every thing has been done which the statute makes essential to the due execution of the power conferred upon the officers. *Hall v. Collins*, 4 Vt. 316; *Brown v. Wright*, 17 Vt. 97; *Mussey v. White*, 3 Greenl. 302; *Worthing v. Webster*, 45 Me. 270; *Wescott v. McDonald*, 22 Me. 402; *Phillips v. Phillips*, 40 Me. 160; *Waldron v. Tuttle*, 3 N. H. 340; *Lessee of Dunn v. Games et al.*, 1 Me. L. 319; *Alvord v. Collin*, 20

Pick. 418 ; Howe v. Russell, 36 Me. 115 ; Stevens v. McNamara, 36 Me. 176.

4. Where the purchaser seeks to rescind his contract of purchase, and recover back the amount of his bid from the tax collector, the burden of proof is cast upon him to prove that the sale was void, and he could acquire no title to the land under it. Treat v. Orono, 26 Me. 217.

5. The rule of the common law is, that he who affirms the existence of a material fact must prove it, and the opposite party is seldom, if ever, required to prove a negative. Hinman v. Pope, 1 Gilm. 131.

All essential links in every chain of title, whether they are evidenced by records or deeds, or rest merely in parol, must be affirmatively proved by the party who sets up the title. The rule imposed upon the tax purchaser is, therefore, no departure from the general principles of jurisprudence. It is his business to collect and preserve all of the facts and muniments upon which the validity of his title depends. The very nature of such titles ought to warn the purchasers to see that all the prerequisites of the law are complied with *ad unguem* (to a nicety). They often buy large and valuable tracts of land for a mere trifle, and they ought always to expect that the owner will attempt to recover them. This is notice, intrinsic in the transaction, that they must be ready for defence, and they ought, at once, to collect the proper evidences of compliance with the law; these documents, being written or printed, can be just as easily preserved as their deed. Blackwell on Tax Titles, page 75 ; Jackson v. Roberts, 11 Wend. 425 ; Tolman v. Emerson, 4 Pick. 160.

6. Thus much for the common law, which devolves upon the party claiming under the tax sale the burden of proving ; that, in all essentials, the officers have performed the duty enjoined upon them by the law under which the proceeding took place. That the legislature possesses competent power to change the common law rules of evidence, and declare that the tax deed itself shall be received in all courts as *prima facie* evidence that all of the prerequisites of the law have been complied with, and thus shift the

onus probandi from the shoulders of the purchaser to those of the owner, is conceded. (And such deed has been held to have the same effect in the courts of another State than where the law is enacted.) *Pillow v. Roberts*, 13 How (U. S.) 472; *Bussey v. Leavitt*, 3 Fairf. 378; *Turner v. Leomans*, 14 Ohio, 207.

7. A tax deed under Iowa Stat. of Jan. 15, 1841, loses its character as *prima facie* evidence, when it is shown that in any essential particular the proceedings were irregular. *Rayburn v. Kuhl*, 10 Iowa, 92.

8. The fact that a tax deed is *prima facie* evidence of certain facts makes it none the less obligatory to comply strictly with the law. The deed simply shifts the burden of proof. *Kelsey v. Abbot*, 13 Cal. 609.

9. That the legislature has the further power to declare the deed *conclusive* evidence of title, is denied. *Blackwell on Tax Titles*, page 79.

10. The power of taxation, so far as it relates to the collection of taxes, was designed to operate upon those only who should wilfully or negligently omit the payment of taxes to which they might be subject, and which should be legally assessed upon their estates, and not upon those who should promptly perform all of their constitutional obligations. The obligation is reciprocal; if the citizen performs his duties to the government, that government should perform its duties to the citizen. Among the first of these, is protection in his property—not only from private force, cupidity, and fraud, but from governmental plunder—and it should not be taken by the State, or its agents, without any fault or omission of duty on his part. If the land was not liable to taxation by reason of an exemption, if no taxes had been assessed upon it, or if the taxes had been paid, the power of sale never attached to it. To hold that the owner, under such circumstances, is precluded from showing the fact, would be a “monstrous doctrine.” *Jackson v. Morse*, 18 Johns. 441.

This “the legislature cannot constitutionally do.” This is not the *lex terrae* meant by the Constitution. 16 Mass. 330; 2

Kent's Com. 340; Corbin v. Hill, 21 Iowa, 70; Moulton v. Blaisdell, 24 Me. 283.

But there is no constitutional objection to making a tax-deed conclusive to non-essentials. Abbott v. Lindenbower, 42 Mis. 162.

11. A tax deed is *prima facie* evidence, that the land was taxable. Eaton v. North, 20 Wisc. 449.

12. When a paper is not found in the proper office or place of deposit, it is presumed that no such paper ever existed. Hall v. Kellogg, 16 Mich. 135.

CHAPTER IV.

OF THE ELECTION AND QUALIFICATION OF THE SEVERAL OFFICERS WHO HAVE ANYTHING TO DO WITH THE EXECUTION OF THE POWER.

1. It is a general principle of law, that whenever a right is claimed under the proceedings of one who purports to have acted in an official capacity, the fact that he who did the act upon which the right is based, was a public officer, must appear. This is especially applicable to a case where a title to real estate is to be divested under the authority of a statute, and through the intervention of a public officer. It may, therefore, be safely affirmed as a general rule, that the party claiming title under a tax sale must show that the acts required to be done under the statute, in order to divest the title of the former owner, were performed by the officers of the law, and not simply by persons, who assumed to act in an official capacity. The citizen is entitled to all the protection against fraud, rapacity, and abuse of authority in the sale of his property, which official responsibility can secure. It, therefore, becomes an important question to ascertain who is an officer, within the meaning of this rule. *Payson v. Hall*, 30 Me. 319 ; *Blackwell on Tax Titles*, page 92.

2. An office is defined to be a public charge, or employment ; and he who performs the duties of that office is an officer.—*United States v. Maurice*, 2 Brock. 102.

3. The mere claim to be a public officer, or the performance of a single, or even a number of acts, in that character, will not constitute an officer *de facto* : there must be some color to the claim, under an election or appointment, or an exercise of official functions, and an acquiescence on the part of the public for a length of time, which would afford a strong presumption of a colorable

right. *McGregor v. Balch*, 14 Vt. 428 ; *Tucker v. Aiken*, 7 N. H. 140 ; *Wilcox v. Smith*, 5 Wend. 234.

4. The consequences naturally arising from the distinction between an officer *de jure* and one *de facto* are well settled. An officer *de jure* is clothed with all the power and authority appertaining to the office, and his acts, within the limits of his authority, cannot be questioned anywhere ; while the acts of an officer *de facto* are valid so far only as the rights of the public or third persons, having an interest in such acts, are concerned. Neither the title of such an officer, nor the validity of his acts as such, can be indirectly called in question in a proceeding to which he is not a party. The effect of this rule is, to render the acts of an officer *de facto* as valid and effectual as though he was an officer *de jure*. *Blackwell on Tax Titles*, page 93.

5. An individual coming into office by color of an election or appointment, is an officer *de facto*, and his acts in relation to the public or third persons are valid, until he is ousted by quo warranto, although it is clearly made to appear that his appointment or election was illegal. His title shall not be inquired into collaterally. *Plymouth v. Painter*, 17 Conn. 585 ; *McGregor v. Balch*, 14 Vt. 428 ; *Gilmore v. Holt*, 4 Pick. 257 ; *Wilcox, v. Smith*, 5 Wend. 234.

6. The rule, it will be perceived, is designed simply to protect the public, by preventing a failure of justice, and the great public mischief which might otherwise be justly apprehended. It gives to the officer *de facto* no immunities whatever, confers upon him no rights, and shields him from no responsibility. *Blackwell on Tax Titles*, page 95.

7. Upon a review of the authorities, it will be seen, that while the general rule is conceded, that the acts of an officer *de facto* are valid, whenever third persons are interested in the act, yet many of the authorities affirm that the great strictness uniformly exacted in the divestiture of estates, under the taxing power of the government, demands an exception to the rule, and requires proof that those who purport to act in an official capacity in the conduct of the sales, were officers *de jure* ; in other words, that

a regular election or appointment, and a compliance with all the conditions precedent, which must be shown by the officer himself when his title is questioned in a quo warranto — such as the taking of the oath of office, the execution of an official bond, &c., must be clearly proven by the party claiming title under the tax sales; and that the usual presumptions cannot be indulged in by the courts when the proof of official character is wanting. — Pike v. Hanson, 9 N. H. 491; Proprietors of Cardigan v. Page, 6 N. H. 182; Payson v. Hall, 30 Me. 319; Coit v. Wells, 2 Vt. 318; Isaacs v. Wiley, 12 Vt. 674; Alvord v. Collin, 20 Pick. 418.

8. The general principle undoubtedly is, that the acts of an officer *de facto* are valid, so far as the public or the rights of third persons are concerned; and that the title of such an officer cannot be inquired into in any proceeding to which he is not a party. 7 N. H. 131; Smith v. Messer, 17 N. H. 420.

9. It must be confessed, that the reason of the rule giving effect to the acts of an officer *de facto*, and the weight of authorities, do not sanction a departure from the general principle which controls in all other cases; and the better opinion is, that where a tax is assessed, and the proceedings are conducted by officers *de facto*, the sale will be maintained. Sheldon v. Coates, 10 Ohio, 278; Downer v. Woodbury, 19 Vt. 329; Hale v. Cushing, 2 Greenlf. 218; Spear v. Ditty, 8 Vt. 419.

10. It was held in Payson v. Hall, 30 Me. 319, that in order to maintain title under a tax sale, it is not sufficient to show, that the person making the sale had been chosen collector, and acted in that capacity, but to render the sale valid, it is indispensable that he take the oath of office prescribed by law.

11. If a person without election or legal qualification could act as a collector of taxes, and as such make sale of an estate, and the production of a deed made by him in that capacity were to be considered as effectual without proof of his election and qualification, there would be no effectual security for the faithful discharge of his duties. Such was not the intention of the legislature. The party is required to produce the collector's deed, not

the deed of a person assuming, without right, to act in that capacity. The tax-payer is entitled to have his interests protected in the sale of his property by the obligations imposed by the official oath. *Payson v. Hall*, 30 Me. 319.

12. The same doctrine was maintained in New Hampshire. *Proprietors of Cardigan v. Page*, 6 N. H. 182; *Tucker v. Aiken*, 7 N. H. 131; *Coit v. Wells*, 2 Vt. 318.

13. Where the defendant claimed title under a sale for taxes, it appeared, that the collector who made the sale had not given such a bond as the law required, and the sale was held a nullity.—*Isaacs v. Wiley*, 12 Vt. 674.

14. The election, qualification, and proceedings of the officers who make an assessment of taxes, and the proceedings of the collector in making the sale of land for taxes, are founded solely upon the provisions of the statute; such provisions must be strictly complied with. *Greene v. Lunt*, 58 Me.

CHAPTER V.

OF THE LISTING AND VALUATION OF THE LAND.

1. A listing and valuation of the land for taxation, within the time, and in the manner required by law, is essential to the validity of a tax title. This is a prerequisite which cannot, under any circumstances whatever, be dispensed with. In a double sense, it is an indispensable prerequisite; first, to satisfy the plain and unequivocal demands of the statute; and second, to give life and energy to the statute itself. It is the basis upon which all the subsequent proceedings rest. Blackwell on Tax Titles, page 106.

2. In most of the States, a duplicate of this list is delivered to the collector, and this constitutes his authority to demand the tax, distrain the goods, and sell the land of the delinquent. The listing and valuation constitute the security of the citizen, the foundation of the assessment, and all the subsequent proceedings, the authority of the officer to collect the tax, and the basis upon which the settlements of the collecting officers are made. *Graves v. Braen*, 11 Ill. 431; *Thurston v. Little*, 3 Mass. 429.

3. The ordinary signification of the term list, is a roll or catalogue. In its technical sense, it means a complete enumeration of the owners of property in a collection district, together with a description and valuation of the property, made periodically, with a view to equality and uniformity in the levy of taxes. It is variously called tax list, rate bill, assessment roll, according to the laws and usages of the respective States. Blackwell on Tax Titles, page 108.

4. As the list is the foundation of all the proceedings, it is the duty of the purchaser at the tax sale, or those claiming under him

except where the onus probandi has been changed by law, to produce the original, or, in case of its loss and destruction, a duplicate or counterpart; if there should be no duplicate, then an examined or sworn copy, and then if there is no duplicate, or examined copy, then parol evidence may be given of its contents. *Nalle v. Fenwick*, 4 Rand. 591; *McCall v. Lorimer*, 4 Watts, 351.

5. When the original, its counterpart, or examined copy is produced, the first inquiry will naturally be, is it an official document? And this will depend upon the fact, whether the person or persons who made it, had authority, under the law, to take a list and make a valuation of the taxable property within the district where it purports to have been made. When the list is made out by an officer *de jure*, the official character of the document of course, cannot be gainsaid. But when made by an officer *de facto*, especially one who is so regarded, because he has neglected to take the oath of office prescribed by law, *i. e.*, that he will make a true and perfect list of, and fairly and impartially value, the lands which are liable to assessment, within his district, the official character of the document is more questionable than any other act performed during the whole course of the proceedings. Where authority is conferred by the statute, upon several persons to list and value lands for taxation, all should convene together, because the advice and opinions of all may be useful, though all do not unite in the decision; but it is not essential that all should concur in the judgment—the act of a majority will be binding. *Blackwell on Tax Titles*, page 110.

6. Where the list is signed by a majority only of the number, the presumption of law is, that all were consulted; but where the evidence shows that all did not convene and consult together, the list will be held invalid. *Doughty v. Hope*, 3 Denio, 594; *Middletown v. Berlin*, 18 Conn. 189; *Lowe v. Weld*, 52 Me. 588.

7. But where the board by law consists of three, and only two are chosen and qualified, the acts of the two are invalid.—*Williamsburg v. Lord*, 51 Me. 599.

8. Assessors are the officers of the law, and must obey the law;

and no direction of the town, or long-continued usage, can justify a departure from the law. Blackwell on Tax Titles, page 112.

9. The statute of Maine required the assessors to "make perfect lists of their assessments, under their hands, &c., and commit the same to the collector, with a warrant under their hands and seals, &c." In two cases the lists were not so signed, but the warrants in the same paper book were; and the court held, that a signing of the list was an essential requisite, that it must bear upon its face evidence of its official sanction, and until thus signed was an incomplete and void act—"an unfinished proceeding." *Colby v. Russell*, 3 Greenlf. 227; *Foxcroft v. Nevens*, 4 Greenlf. 72.

10. In an action upon the collector's bond, when the lists were in his possession, the court presumed that they had been duly authenticated by the official signatures of the assessors. *Kellar v. Savage*, 20 Me. 199.

11. The power of the assessor is limited and special. It is confined to estates lying within his district. It follows, therefore, that if he list and value lands not within his town or county, his jurisdiction is exceeded, and the proceeding, to that extent, is void. *Winslow v. Morrill*, 47 Me. 411.

12. That the omission to tax property which should be taxed will not necessarily vitiate the tax. *Merritt v. Farris*, 22 Ill. 303; *Smith v. Smith*, 19 Wisc. 615. But where the omission is intentional, it has been held to vitiate the assessment. *Weeks v. Milwaukee*, 10 Wisc. 242; *Kneeland v. Milwaukee*, 15 Wisc. 454; *Hersey v. Milwaukee*, 16 Wisc. 185. A reduction of valuation of part of land in a town, leaving the rest of the land at the old valuation, if innocently made, and not injuriously affecting the party objecting, will not vitiate the tax. *Kelley v. Corson*, 11 Wisc. 1.

13. In many of the States, the law requires the listers to return, file, or lodge the original, or an attested copy of the list, or an abstract thereof, with some public officer designated, on or before a certain day named. The object of this requirement is to enable the tax-payer to inspect the list, and take such steps as

he may deem necessary for the purpose of correcting upon appeal, motion, or otherwise, any errors in the listing and valuation which have taken place to his prejudice. It has been repeatedly held, that a failure on the part of the listers to perform this duty, renders the list and all of the proceedings founded thereon void. *Pittsfield v. Barnstead*, 40 N. H. 477; *Wheeler v. Mills*, 40 Barb. 644.

14. An illegal and void assessment is no assessment at all; it is a nullity, and authorizes no person to act under or enforce it. *Blackwell on Tax Titles*, page 120.

15. It is a sound and inflexible rule of law, that when special proceedings are authorized by statute, by which the estate of one man may be divested and transferred to another, every material provision of the statute must be complied with. On this principle alone, the direction to the assessor to make his return by a given day, is compulsory, and its performance is indispensable to the validity of the assessment. Without a valid assessment, the subsequent proceedings necessarily fall for the want of a basis upon which to rest. *Thames Manufacturing Company v. Lothrop*, 7 Conn. 550.

16. An accurate and a pertinent description of the land embraced in the list is essential to its validity. *Hubbell v. Weldon*, *Hill v. Denio*, 139. The object of this requirement is, to enable the owner to ascertain from the list itself, that the tax charged against him has been assessed upon his land, and not upon that of a stranger. Besides, the list is the foundation of all the subsequent proceedings. Each document, wherein the land is designated, must necessarily depend upon the list for the accuracy of its description. A false or mistaken description in the list, runs through the warrant to collect, the advertisement, return, certificates, and deed. And even when an error is discovered, and corrected in either of the subsequent documents, a defective listing is not cured by the amendment. It follows that unless a true description is contained in the list, the officer, has no guide in advertising, selling, and conveying the land; the former owner cannot know that his land is in jeopardy, and be able to save it

by paying the tax; nor can the purchaser at the tax sale find and locate the land after its purchase. *Yeuda v. Wheeler*, 9 Texas 408; *Brown v. Dinsmoor*, 3 N. H. 103; *Douglass v. Dangerfield*, 10 Ohio, 152; *Turney v. Yeoman*, 16 Ohio, 24; *Dunn v. Ralyea*, 6 Watts and Serg. 475.

17. One half island—; part of lot 1, range 3—; ten acres of lot 1, range 3—; are insufficient descriptions in an assessment and tax title. The Cyrus Keene place in lot 6, range 2—; lot 1, range 3, Lunt's lower tract. The Lary farm on the hill being parts of lot 1, in ranges 3 and 4—are sufficient description in assessment and tax title. These lots are sufficiently described to enable any one to identify them by having the knowledge necessary to apply the description to the face of the earth. *Greene v. Lunt*, 58 Me.

18. A description sufficiently certain to convey land between man and man, and which, if contained in an agreement to convey would authorize a court of equity to decree a specific execution, will not answer in the proceedings to enforce the collection of a tax. In the case of private transactions, the courts, in construing the document, endeavor to collect the intention of the parties, and give that intention effect. If a latent ambiguity exists in the description, parol evidence is resorted to for the purpose of explaining it, and giving to the intention of the parties complete operation; and where the estate intended to be conveyed, is sufficiently described in the deed or other writing, the addition of a circumstance, false or mistaken, will be rejected as surplusage, in order to carry that intention into effect. But in these tax proceedings the owner of the estate has nothing to do—he intends nothing; the government is acting, through its agents, in hostility to him, and with a view of enforcing the collection of a tax from him. If the officers undertake to list for him lands lying in one place, for those which lie in another, or have no existence at all they intend to do what the law under which they profess to act, does not permit. The rule is laid down, that a listing is fatally defective and void, if it contain such a falsity in the designation or description of the land listed, as might probably mislead the

owner, and prevent him from ascertaining by the notices, that his land is to be sold or redeemed. Such a mistake or falsity defeats one of the obvious and just purposes of the law—that of giving the owner an opportunity of preventing the sale by paying the tax. *Tallman v. White*, 2 Comst. 66; *Yeuda v. Wheeler*, 9 Texas, 408.

19. In *Lafferty's Lessee v. Byers*, 5 Ham. 457, the land was thus listed:—

Name.	No. of Entry.	Original Proprietor.	Original Quantity	Water-course	Acres.	Rate	Tax.
Haines, John	4,401	Haines, John	170.	Mad River.	73	2.	39.22.

The court instructed the jury, that the description contained in the list was so imperfect, that no valid sale of the land in question could be made under it. On motion for a new trial, this ruling was sustained, the court saying, "In this case, the whole original entry was listed by its then owner, Haines, and, perhaps, was sufficiently described by its number and water-course; but ninety-seven acres had been transferred to another name, leaving seventy-three acres still standing to Haines. What seventy-three acres? In common or separate? If separate, in what part of the lot does it lie? The answers to these questions materially affect the price. Without them no such information is communicated to the public as is calculated to produce a fair competition, and no prudent man will offer its value in his bid. The description, therefore, is not adapted to promote a fair sale, and it must be holden insufficient.

The land listed for taxation must be described with sufficient certainty to point out what particular lands, and the description in the deed is limited to the description in the listing. *Lafferty v. Byers*, 5 Ham. 457.

20. The law requires a pertinent description of the property, so as to identify the same. In describing land in a city, the number of the lot is not given, if it is not stated whether it is an entire lot, or a part of a lot. If it does not appear whether it is thirty feet

front, or thirty feet square. And if thirty feet front, if it is not stated upon what street it fronts. There is, in fact, nothing in the description by which the land can be identified. *Hannel v. Smith*, 15 Ohio, 134.

21. Where neither number of square, nor of lot, nor name of street, is given, the assessment does not sufficiently identify the land. *Woolfolk v. Foubene*, 15 La. Ann 15.

22. Where, in the description, initial letters, abbreviations, and figures were used, thus: "E. 1-2 S. W. 1-4, section 24, town 3, south of range 7 west, 80 acres, &c.," the proceeding was held regular. *Sibley v. Smith*, 2 Gibbs, (Mich.) 503.

23. The same rule of strictness, in relation to the listing of lands according to the legal character assigned to them by law, is adopted by the courts in Maine, and it is held, that unless they are listed in conformity with the law, the sale is void. Thus, in *Barker v. Hesseltine*, 27 Me. 354, where the law required "unimproved lands of non-resident proprietors" to be assessed accordingly, and the land in question was listed as the property of "a non-resident proprietor unknown," but, in point of fact, belonged to a resident of the town where the property was situate, and the deed under which he claimed title was duly recorded before the assessment was made; the court held the listing and sale void.—Other cases in the same court reiterate the principle. *Wescott v. McDonald*, 22 Me. 402; *Moulton v. Blaisdell*, 24 Me. 283; *Wallingford v. Fiske, et. al.*, 24 Me. 386.

24. In Maine, where land belonging to a resident was assessed as non-resident land, the assessment was held void. A similar decision was made in Massachusetts. *Lunt v. Wormwell*, 19 Me. 100; *Rising v. Granger*, 1 Mass. 48.

25. In many of the States the statutes require the land to be listed in the name of the owner or occupant of the land; in others the law only directs the name of the owner to be inserted, when known. The spirit of this requirement is, to give the owner additional means in the examination of the tax list, to ascertain whether his land has been assessed; the law presuming that every sane person will remember his name, if he is unable to distinguish

his land by the description contained in the list. In Louisiana, where the statute required the name of the owner to be inserted, and the list stated that he was "unknown," it was held defective and void. Under a similar statute in New York, it was held, that where the land was described in the list as belonging to "the widow and heirs of A. B., deceased," this was a sufficient compliance. So the use of the firm name, where the land was owned by partners. *Blackwell on Tax Titles*, pages 143, 144.

26. In *Noble v. Indianapolis*, 16 Ind. 56, an assessment "to the heirs of N," was held good, although they had made partition of the estate, and some had been sold to third parties, but the deeds had not been recorded. So an assessment "to the estate of J. B. Coles." *State v. Jersey City*, 4 Zab. 108. In *Coombs v. Warren*, 34 Me. 89, which was a writ of entry, the demandant claimed under a mortgage, and the tenant under a tax title. The statute required the land to be listed in the name of the "owner or possessor." The land in question was listed in the name of the demandant, a mortgagee of the premises, who never was in possession. The court held, that the mortgagor was the owner, and that as the property was not listed in his name the proceedings were void. So, where the statute of Massachusetts directed an assessment in the name of the "occupant or tenant," and it was listed in the name of the landlord, the list was held void. *Martin v. Mansfield*, 3 Mass. 419.

27. In those cases where the statute requires the assessor to list the lands in the names of the owners respectively, if known, the principle to be deduced from the authorities is, that it is the duty of the assessors, to ascertain the true name, that if they omit the name in the list, or state that the owner is unknown, the presumption is, that the officer did his duty, and that the owner was in point of fact unknown, but where it is shown that the name of the original owner was known to the officer, the list will be held invalid, because the statutes expressly declare that the name of the owner shall be inserted when it can be done. (But calling his name Packard, instead of Packer, has been held not material.—*Pierce v. Richardson*, 37 N. H. 307.) *Smith v. Messer*, 17 N.

H. 420 ; the Proprietors of Cardigan v. Page, 6 N. H. 182 ; Nelson v. Pierce, 6 N. H. 194 ; Ainsworth v. Dean, 1 Foster, 400 ; Brown v. Veazie, 25 Me. 359 ; Merritt v. Thompson, 13 Ill. 716 ; Shimmin v. Inman, 26 Me. 228.

28. Where an entire tract of land is assessed to one who owns only a portion of it, the listing is illegal. *Barker v. Blake*, 36 Me. 433.

29. Where one owns several tracts or parcels of land, they must be listed and valued separately, else the proceedings will be void. (In *Russell v. Wertz*, 12 Har. (Penn.) 337, it was held, that the assessment of two contiguous tracts, owned by the same person as one tract, would not avoid the sale.)

30. Thus in *Shimmin v. Inman*, 26 Me. 228, the statute required the assessors to set forth in their lists "the number of acres of unimproved land which they may have taxed on each non-resident proprietor of lands, and the value at which they have estimated the same." The lots in controversy were thus listed :—

Name of own'r.	No. of Lots.	Range or Division.	No. of Acres.	Value.	State and Cou'ty tax.	Town Tax.	Total.
Wm. Shimmin, or Unknown.	16 17 18	On Pen- obscot River.	240.	\$240.	\$0.61.	\$3.22.	\$3.83.

31. The court held the list illegal, saying, "A fair construction of the statute requires, that each lot should be valued and assessed separately. The lots may be owned by different persons ; and if a joint valuation and assessment were allowed, one owner could not ascertain the amount of tax on his own land, or pay it, or redeem the land when sold, without paying the tax on all the other lands assessed with it. Although, in this case, the several lots appear to have been owned by one person, that fact cannot dispense with the law, or excuse a deviation from it.

Lastly, to make a complete and perfect list, the land must be valued in the manner and upon the principles prescribed by law. *Blackwell on Tax Titles*, page 148.

32. A valuation being essential, the statute, must be strictly

pursued in making and returning it, or the proceedings based upon it will be illegal and void. *Thurston v. Little*, 3 Mass. 429; *Thayer v. Stearns*, 1 Pick. 482.

Usage can in no case justify a departure from the requirements of the law in this respect, where they are plain and unambiguous. *Thurston v. Little*, 3 Mass. 429.

33. The assessment of a tax by one corporate body, based upon a valuation made under the authority of another, is unauthorized and void. *Granger v. Parsons*, 2 Pick. 392.

34. Where the list was required to be verified by the oath in writing of the tax-payer, and it was not so verified, a sale based on such assessment was held invalid. *Davis v. Farnes*, 26 Texas, 296.

35. Where a part of a city lot belongs to one and a part to another, each part must be assessed to the proper owner, if known. *Knox v. Huidekoper*, 21 Wisc. 527.

36. It is sufficient under the Vermont statutes that the list should be in fact sworn to, it is not necessary that a certificate of the oaths having been administered should be annexed to the list. *Blodgett v. Holbrook*, 39 Vt. 336.

37. There must be in the assessment something to identify the land, it will not do to show by parol that the assessment was intended to be applicable to a particular tract, and a "sale without description, circumstance, or name, having any known relation to the land," is bad. *Lyman v. Philadelphia*, 56 Penn. St. R. 488.

38. An assessment made by one assessor is void. *Metcalf v. Messenger*, 46 Barb. 325.

39. An assessment is not avoided by a failure of the assessor to demand a sworn statement of the person assessed, the provision as to such demand being for the protection of the State, and not of the tax-payer. *State v. Western Union Telegraph Company*, 4 Nev. 338.

40. Where the statute allows land to be assessed by its "common designation or name," it seems that the block and number are a sufficient description. *Wright v. Cradlebaugh*, 3 Nev. 341.

41. Omission to assess property liable will not affect validity of

assessment roll, if arising from mistake of law or fact. *People v. McCreery*, 34 Cal. 432.

42. An assessment where there is no dollar mark to the figures showing the valuation is void, but if the dollar mark is prefixed to the aggregate under an appropriate heading, it is good. *Brady v. Seaman*, 30 Cal. 610; *People v. San Francisco Savings Union Bank*, 31 Cal. 132; *People v. Empire, &c., Company*, 33 Cal. 171.

43. The land taxed must be definitely and distinctly described in the assessment, the assessment is the foundation on which rests all the subsequent proceedings. *Greene v. Lunt*, 58 Me.

CHAPTER VI.

OF THE LEVY OF THE TAX.

1. The levy of a specific sum of money, upon each tract of land embraced in the list, by the proper authority, is another essential link in the chain of a tax title, without which the purchaser acquires no rights whatever. By this assessment the amount which every citizen is bound to pay for the public benefit is definitely fixed ; and to it he is compelled to resort, for the purpose of ascertaining how much money he must pay to that public, as his share of a common burden, and thus prevent a sale of his property. It is the authority upon which the collector proceeds to demand and enforce the collection of the tax,—he has no other means of ascertaining the sum assessed against an estate,— and in this respect it may be regarded as analagous to an execution, issuing upon a judgment. It is the guide of the owner and officer in redeeming the land after the sale. Again, it is evident that the tax must be due and unpaid, in order to authorize a sale of the land upon which it was assessed. This can only be shown by proof that the land was not only listed and valued, but that the tax charged against it for the current year was in fact levied by competent authority, and in the time and manner prescribed by law. When such evidence is produced, the presumption is that the tax thus levied is unpaid, upon the same principle that a promissory note is evidence of a continuing debt, until its extinguishment by payment is established. The onus probandi is upon the party claiming under the sale. *Nalle v. Fenwick*, 4 Rand. 594. Nor is there any difficulty in making proof of this fact, if it ever existed. The State tax is fixed by a public statute ; the list will show the valuation of the land, and by computing the per centage

of tax fixed by the law upon that valuation, it can be seen in an instant whether the tax is a legal one or not. When the tax is levied by a county, city, town, or other corporation, a record is invariably required to be made of the order; and the books themselves, or certified or sworn copies thereof, are admissible in evidence, and upon an inspection of the list, and a comparison of it with the law and the order, the legality or illegality of the tax will appear. *The Proprietors of Cardigan v. Page*, 6 N. H. 182; *Spear v. Ditty*, 8 Vt. 419. The tax, of course, must be levied by the tribunal or persons to whom the power is delegated. And it is held in New Hampshire, that the levy of a tax at a town meeting not legally warned, is illegal and void. *The Proprietors of Cardigan v. Page*, 6 N. H. 182.

2. The power to levy the tax is a limited one, and if the limits prescribed by the law are transcended, the levy is void. *West School District of Canton v. Merrills*, 12 Conn. 437; *Kemper v. McClelland*, 19 Ohio, 324.

3. In every case, where an individual tax is upon trial shown to be greater than the amount authorized, a sale of the land for payment of such tax will be deemed void. *Kemper v. McClelland*, 19 Ohio, 324; *Blackwell on Tax Titles*, page 159.

4. Where the inhabitants of a school district voted to raise a tax of \$250, and the assessors charged upon the list a tax of \$285.01, the proceeding was held illegal. *Joyner v. Third School District in Egremont*, 3 Cush. 567.

5. If land be sold for the non-payment of divers taxes, one of which is illegal, and the residue legal, the sale is void; the land must be liable for all the taxes for which it was sold. In such cases all the proceedings to collect are necessarily void, as it is impossible to separate and distinguish, so that the act should be in part a trespass, and in part innocent. *Elwell v. Shaw*, 1 Greenlf. 335; *Torrey v. Millbury*, 21 Pick. 70; *Bangs v. Snow*, 1 Mass. 188, 189; *Drew v. Davis*, 10 Vt. 506; *Thurston v. Little*, 3 Mass. 429, 433.

6. Where the tax is less than the amount authorized by law to be levied, it would seem clear that the sale ought to be maintained

as the error does not prejudice the owner in any respect. *Black. on Tax Titles*, page 162.

7. If a tax is levied for an illegal purpose, it cannot be sustained. Thus the levy of a tax for the support of a ministry, or to defend the town against a public enemy, is not warranted by a law conferring power to lay and collect taxes to "defray necessary town charges." *Bussey v. Gilmore*, 3 *Greenlf.* 191 ; *Stetson v. Kempton*, 13 *Mass.* 272.

8. In the assessment of taxes, the state, county, city, road, school, and other taxes authorized by law to be levied and collected, ought to be kept separate, and not blended together. The reason is obvious. They are imposed by different authorities, and for different objects. One tax may be levied by competent authority, and for a lawful purpose, while another may be altogether unwarranted. When any tax-payer thinks proper, he has a right to look into each one of these taxes separately, and have its legality determined by the appropriate tribunals. This cannot be done where the different taxes are confounded together, and the identity of each is thus destroyed. A confusion of the several taxes can not take place without invalidating the entire assessment. *State v. Falkinburge*, 3 *Green*, L. 320.

9. The legislature have power to delegate to municipal corporations, and other local tribunals or bodies, authority to levy and collect taxes for specified purposes, and to determine the extent of territory which shall constitute a tax district. *Thomas v. Leland*, 24 *Wend.* 65 ; *Norwich v. Co. Commissioners, &c.*, 13 *Pick.* 60.

10. While this doctrine is unquestionable, a municipal corporation or other inferior organization possesses no power to levy taxes not expressly authorized by its act of incorporation. *Asheville v. Means*, 7 *Ired.* 406.

11. Where a county or other local corporation levy a tax which is illegal, and the citizen pays the tax to one who has a formal authority to collect it, the payment is not voluntary, but compulsive, and an action will lie against the collector to recover it back, unless he has paid it over to his superiors, in which event the action must be brought against the corporation. *Sumner v.*

Dorchester, 4 Pick. 361 ; Joyner v. Third School District of Egremont, 3 Cush. 567 ; Dakota v. Parker, 7 Min. 273.

12. But the fact that a tax is unconstitutional, or otherwise illegal, is no defence to a collector who refuses to pay over the tax after he has collected it. *Waters v. State*, 1 Gill. 302.

13. When the original tax was levied without any authority of law, no subsequent legislation can make it a legal demand, but irregularities may be cured. *Hart v. Henderson*, 17 Mich. 218.

14. A tax levied without authority may be made valid by legislation, even after suit brought to recover the tax. *Grim v. Weissenberg School District*, 57 Penn. St. R. 433 ; see also *Wilson v. Buckman*, 13 Minn. 441.

The land taxed must be definitely and distinctly described in the assessment, the assessment is the foundation on which rests all the subsequent proceedings. *Greene v. Lunt*, 58 Me.

15. For a description of the land the collector must obtain his information from the assessment, he has no authority to add to or take from it. Nor can the assessors after the completion of the tax add to the description so as to make that certain which was before uncertain. The assessment must be complete in and of itself as much as a deed or contract. *Greene v. Lunt*, 58 Me.

CHAPTER VII.

OF THE AUTHORITY TO COLLECT THE TAX.

1. The authority to collect the tax, is a separate and distinct thing from the authority to sell the land, in case the owner proves delinquent, although the same officer usually exercises both powers. Black. on Tax Titles, page 166.

2. It has already been shown that the listing, valuation, and levy of the tax, which usually appear upon one document, called the list, is in the nature of a judgment. Upon the same principle, it may be said that a copy of the list, duplicate, invoice, or warrant to collect, is analogous to an execution, and constitutes the only authority of the officer to proceed and collect the tax, by a demand, or seizure of the body or goods, in case payment is not made of the tax charged. Without a legal document of this nature, delivered by the officer of the law designated for that purpose, the collector has no authority to proceed to enforce payment of the taxes. His demand, seizure of the body or goods, his return, and all of his other acts, will be nullities, and lay no foundation for the advertisement and the sale of the land, by the officer intrusted by law with those duties. It must not only be made and delivered by the proper officer, but it must be placed in the hands of the collector *de jure* or *de facto*, and not in those of a mere usurper. Aldrich v. Aldrich, 8 Met. 102; Van Rensselaer v. Witbeck, 7 N. Y. 517; Hannel v. Smith, 15 Ohio, 134; Barnard v. Graves, 13 Met. 85; Homer v. Cilley, 14 N. H. 85; Chandler v. Spear, 22 Vt. 388; Bassett v. Porter, 4 Cush. 487; Burgess v. Pue, 2 Gill, 11; Hartley v. State, 3 Kelly, 233.

3. If an officer *de facto* seize the body or distrain the goods of

the tax-payer, he will be liable as a trespasser. *Blake v. Sturtevant*, 12 N. H. 567.

Not only must the authority to collect, be made by, and delivered to the proper legal officer, but the copy, invoice, or abstract of the assessment roll, or the warrant to collect, must be duly authenticated, with a view to their identity as official documents. *Chase v. Sparhawk*, 2 Foster, 134.

4. Where the statute requires the list to be delivered to the collector on or before a given day, a delivery afterwards confers no authority upon the officer to proceed and collect the taxes. *The Proprietors of Cardigan v. Page*, 6 N. H., 182.

5. A statute of New Hampshire required a copy of the invoice, from which the assessment was made, to be recorded or left in the town clerk's office. This was omitted, and it was held, that until this requirement was complied with, it was illegal to proceed in the collection of the taxes. The statute of Vermont required a recital of the title, and time of passing the act under which the tax was levied, in the warrant to collect; where the time was misrecited, the warrant was held void. *The Proprietors of Cardigan v. Page*, 6 N. H. 182; *Brown v. Wright*, 17 Vt. 97.

6. A tax warrant signed by only two assessors without proof that a third was chosen and qualified, is not a defence in an action against the officer. *Sanfason v. Martin*, 55 Me. 110.

7. The omission of the name of the constable or collector in the direction, does not invalidate the warrant, and the officer may execute it though issued before he was appointed, and if directed to a deceased officer, his successor may act under it. *Wilson v. Seavey*, 38 Vt. 221.

CHAPTER VIII.

OF THE DEMAND OF THE TAX.

1. The mere assessment of a tax upon land does not create a debt against the owner. Black. on Tax Tittles, page 171.

In the absence of any statutory provision allowing interest, it does not draw interest, even after a demand. Shaw v. Peckett, 26 Vt. 482.

2. It may be laid down as an universal rule in the collection of a tax assessed upon the land of resident owners, that the person or personal estate of the delinquent is the primary fund out of which the tax must be paid. A sale of the land itself is a dernier resort. The tax is never so far regarded as a debt, in order to charge the body or goods of the person against whom it was assessed, until a demand has been made, upon the person taxed, by the collector. Bott v. Perley, 11 Mass. 169.

3. The tax-payer must be in default before he can be regarded as a delinquent, and these summary and extraordinary powers, with which the collector is armed, are resorted to. He cannot be in default until he is notified of the tax, and has an opportunity of paying it. If, after a notification is given and a demand made, he neglects or refuses to satisfy the tax, then the power of coercion attaches, and not before. Black. on Tax Titles, page 172.

4. The principles may be thus stated: 1st. Where the statute, under which the proceeding takes place, expressly requires a notification and demand, the requisition must be complied with. 2nd. Where the statute is silent upon the question of notice and demand, it must be construed according to the principles of natural justice, which enjoins a personal demand before the person assessed can be regarded as in default. 3d. Where the statute

does not expressly require a demand of the tax, but authorizes the collector to appoint a time and place for the payment of the taxes upon his list, and give general notice thereof by publication in a newspaper, or by posting the notice in some public place, a personal notice may be dispensed with. A failure to comply with the requirement of the law in this respect, will render a sale of land for taxes void. *Johnson v. McIntire*, 1 Bibb. 295; *Parker v. Rule's Lessee*, 9 Cranch, 64; *Thompson v. Gardner*, 10 Johns. 404. *Mayhew v. Davis*, 4 McL. 213.

CHAPTER IX.

OF THE SEIZURE OF THE BODY, OR GOODS AND CHATTELS OF THE DELINQUENT, TO SATISFY THE TAX.

1. Where the person against whom a tax has been legally assessed, neglects or refuses to pay the tax voluntarily, after a notification and demand made by the collector in the manner prescribed by law, the necessities of the State compel a resort to coercive means. In some States the law requires the body of the delinquent to be arrested, and imprisoned in satisfaction of the tax. *Bassett v. Porter*, 4 Cush. 487 ; *Daggett v. Everett*, 19 Me. 373 ; *Rising v. Granger*, 1 Mass. 48 ; *Appleton v. Hopkins*, 5 Gray, 530.

2. In other states, the law requires the tax to be collected out of the personal estate of the delinquent, if a sufficiency can be found to satisfy it. *Pott v. Perley*, 11 Mass. 169.

3. In South Carolina, the statute thus marshals the remedies : 1st. A distress of the personal estate of the delinquent. 2nd. The sale of the land. 3d. The seizure and imprisonment of the body. A violation of the order of remedies thus prescribed, invariably renders the act of the officer illegal. *Black. on Tax Titles*, page 176 and reports there cited.

4. The remedies prescribed, and the order in which they are directed to be enforced, are prerequisites, and must be as strictly complied with as any other requirement of the law, from the beginning to the end of the proceedings. The law admits of no substitution or change in the order thus established. It is therefore held, that the land of the delinquent cannot be sold in those States which authorize imprisonment, if his body can be found, nor can a resort be had to the land, in States where the personal estate is regarded as the primary fund, as long as a sufficiency of personal estate can be seized and sold in satisfaction of the tax. A sale of the land under such circumstances is illegal and void. *Black. on Tax Titles*, page 176.

CHAPTER X.

OF THE RETURN OF THE DELINQUENT LIST.

1. In several of the States, as heretofore remarked, the power to collect the tax, and the power to sell the land in case of non-payment, is vested by law in different officers. When such is the case, the statute usually requires the collector to return a list of delinquents to his superior, in a certain prescribed form, authenticated or verified in a particular manner, and within a limited time. When such is the requirement, it is regarded as imperative, and not directory, and an exact compliance is demanded. This return is the only evidence of delinquency—of the fact that a demand was made, by the collector, upon the person against whom the tax was charged—and the body of such persons could not be found within the district of the collector; or, that the delinquent had no goods and chattels within the district out of which the taxes could be made. Besides, the return is the foundation of the authority of the superior—to whom it is required to be made—to sell or order a sale of the land of the delinquent. If the officer to whom the return is made, is the person to whom the power of making the sale is intrusted, the return constitutes his authority to sell—if he is directed to issue a warrant or order to some third person to make the sale of the lands embraced in the delinquent list, the return is the basis upon which he issues the order or warrant. Such was the requirement in Illinois, Ohio, Vermont, New York, and New Hampshire. A neglect, therefore, to make this return in the form, manner, and time prescribed, is fatal to the validity of a tax sale. *Hill v. Mason*, 38 Me. 461; *Huntington v. Brantley*, 33 Miss. 451; *Pitts v. Booth*, 15 Texas, 453; *Hopkins v. Sandige*, 31 Miss. 668; *Homer v. Cilley*, 14 N. H. 85.

CHAPTER XI.

OF THE ADVERTISEMENT OF THE TIME AND PLACE OF SALE.

1. The maxim is familiar, "That notice is of the essence of things required to be done." 1 Burr, 477; 3 Denio, 595.

2. It would be a violation of one of the first principles of justice and judicial proceedings, to try, and decide upon, the rights of an individual, civilly or criminally, without notice, and consequently an opportunity of defending himself. Black. on Tax Titles, page 211.

3. So strict is the rule, that where a proceeding of a judicial nature is authorized, and the statute is silent as to notice, the adjudication will be void, unless notice is given to the party in interest. Chase v. Hathaway, 14 Mass. 222; Eddy v. People, 15 Ill. 386; Holiday v. Swailes, 1 Scam. 515; Shumway v. Shumway, 2 Vt. 339; Smith v. Burlingame, 4 Mason, 121; Corliss v. Corliss, 8 Vt. 389.

4. Where the proceeding is before a special tribunal, exercising a summary authority, contrary to the course of proceeding in the common law courts, the evidence that due notice was given must indisputably appear upon the face of the record. Even a recital of the notice is insufficient; it must be set forth at large in the record, that it may be seen on inspection whether the notice was legal and sufficient. If such is the law of notice in judicial proceedings, it applies with much greater force to the exercise of ministerial power, where the act is not only summary, but the notice merely constructive; where the proceeding is in the nature of a judgment, and terminates in the divestiture of a title to real estate. Black. on Tax Titles, page 211.

5. But it seems to have been an universal principle in the legislation of this country relative to compulsory taxation, that a

notice of the time and place of selling the land of a delinquent, must be given by publication in one or more newspapers of the state or county in which the proceeding takes place, by recording the list, or posting notifications, in some public place. Black. on Tax Titles, page 212.

6. It may, however, be laid down as a general rule, that the advertisement of the sale, in the time and manner prescribed by the law, is a prerequisite to the validity of a tax title. The officer derives his power of sale, in part, from the advertisement of it. Power is conferred upon him to be exercised on certain contingencies, and these contingencies must have happened, and the conditions on which he can act must have been performed, before his act can be valid. His power does not attach until every prerequisite of the law has been complied with. One object of advertising tax sales is to give full notice to the proprietor, and furnish him with every facility for the voluntary payment of the tax, before a resort is had to coercive means; and another, equally beneficial to him, is to create competition at the sale, and prevent his entire estate from being sacrificed for a trifling sum compared with its real value, when the sale of a less quantity might have been made, if a spirited competition had existed. The longer the notice is published, the wider the circulation of the paper, and the more full the information conveyed in the advertisement, so much greater will be the competition at the biddings. It follows that any neglect of the officer, which deprives the owner and bidders of that full information which the law intended to give them, is fatal to the validity of the tax sale. *Williams v. Peyton*, 4 Wheat. 77; *Garrett v. Wiggins*, 1 Scam. 335; *Fitch v. Pinckard*, 4 Scam. 69; *Moulton v. Blaisdell*, 24 Me. 283; *Brown v. Veazie*, 25 Me. 359; *Farnum v. Buffum*, 4 Cush. 260.

7. The advertisement is an official act, and to be valid, must be published by the officer to whom the duty has been assigned, and purport upon its face to be his official act, and be attested by his official signature. *Langdon v. Poor*, 20 Vt. 13.

8. It must appear on the publication, by what power, and in what capacity the person acts; and where the official character of

the person was omitted, and the advertisement, did not purport upon its face in any other manner to be an official act, the court held the sale void. *Spear v. Ditty*, 9 Vt. 282.

9. While the law is thus rigid in requiring that the publication should, in fact, be an official act, and so purport upon its face, slight variances between the real and published name of the officer, are regarded as immaterial. Thus, where the name of the collector appointed was Luther *H.* Brown, and the name attached to the advertisement was Luther *W.* Brown, the advertisement was held valid. *Isaacs v. Wiley*, 12 Vt. 674.

10. This decision is in accordance with the general rule, that the law recognizes but one christian name, and that the omission of, or variance in, the middle name of a person, is immaterial. *Franklin v. Talmadge*, 5 Johns, 84.

11. Where the law requires the publication to be made in the State paper, in the paper published in a particular county, or in a particular paper named in the statute, the advertisement must be so published or it is a nullity. The law required a notice to be published, three months prior to the day of sale, by three successive weekly insertions in the newspaper of the public printer of the State. Two publications were inserted in the "Portland Advertiser and State Gazette," which was the newspaper of the public printer; but before the third insertion, the legislature, by a resolve, declared it to be no longer the "State paper." The court decided the advertisement and sale founded on it to be illegal. *Bussey v. Leavitt*, 3 Fairf. 378.

12. But where the law required the notice to be published in the "Vermont Republican" (a paper bearing that title at the time of the passage of the statute being intended), and the name of the paper was afterwards changed by the addition of the words "and American Yeoman," and the notice was published in the paper bearing the title thus changed, the advertisement was held valid, the court saying that "the second name of a newspaper is seldom, if ever, regarded in common parlance. But the addition raises no doubt of the identity of the paper." *Isaacs v. Shattuck*, 12 Vt. 668.

13. It would seem from this that newspapers and persons are placed on the same footing, as far as their names are concerned. The name of each is used for the purpose of designation only, and if the identity can be established, it is certain enough, though a variance may exist. *Black. on Tax Titles*, page 217.

14. It is well settled that if the statute requires the advertisement to be inserted in several newspapers, published at different places, the notice is illegal unless inserted in all of the papers thus designated. *Weer v. Hahn*, 15 Ill. 298; *Bunner v. Eastman*, 50 Barb. 639.

15. The statute usually requires a warrant to collect, or the delinquent list to be delivered to the collector, which constitutes his authority to proceed. *Black. on Tax Titles*, page 219.

16. Next, as to the form of the advertisement. The following principles, or rules, for testing the validity of tax titles, appear to be fairly deducible from the reported cases on that subject. 1st. When the statute, under which the sale is made, directs a thing to be done, or prescribes the form, time, and manner of doing any thing, such thing must be done, and in the form, time, and manner prescribed, or the title is invalid; and in this respect the statute must be strictly, if not literally, complied with. 2nd. But in determining what is required to be done, the statute must receive a reasonable construction, and when no particular form or manner of doing a thing is pointed out, any mode which effects the object with reasonable certainty, is sufficient; and in judging of these matters, the court is to be governed by such rational rules of construction as direct them in other cases. *Chandler v. Spear*, 22 Vt. 388; *Brown v. Hutchinson*, 11 Vt. 569.

17. In another case, the person making the advertisement, omitted to prefix to his signature his official designation of "Collector," as required by the statute form, and the sale was held irregular, upon the ground that the statute form ought to be strictly followed. *Spear v. Ditty*, 9 Vt. 282.

18. Thus, where the statute required that the collector should publish an advertisement that he would sell, on a particular day, all lands on which the taxes remained due for the space of nine

months from the date of the assessment, and a delinquency for this length of time was not stated in his notice, it was held void. *Black. on Tax Titles*, page 223.

19. Without such notice, which is of substantial utility to the person against whom the tax remains undischarged, he is not informed, in the manner which the legislature have provided, that he is exposed to the costs which will arise from an attempt to obtain the tax from the land itself. *Hobbs v. Clements*, 32 Me. 67.

20. In another case, the notice recited a tax "for the purpose of making, repairing, and building bridges," whereas the tax authorized by the statute was for "making and repairing roads and building bridges." The true object of the tax not appearing in the advertisement, it was held insufficient. *Langdon v. Poor*, 20 Vt. 13.

21. So where the advertisement described the tax only as a "money tax," when in fact it was a "state, county, and school tax," it was held insufficient. *Pierce v. Richardson*, 37 N. H. 314.

22. In describing the land, the collector in his advertisement must give a particular and certain description, so that the owner may know that it is his land, and bidders may ascertain its locality with a view to the regulation of their bids. *Brown v. Veazie*, 25 Me. 359; *Farnum v. Buffum*, 4 Cush. 260.

23. The statute of Massachusetts required the advertisement, among other things, to state the names of the owners, if known, and when unknown, to give "a substantially accurate description of the rights, lots, or divisions of the real estate to be sold;" the description given was, "Moses Buffum, house and land, and Loring Emerson, house, barn, and 115 acres of land." The court say, "This we consider a very uncertain description, and altogether insufficient. The owner's name not appearing in the notice, a full and clear description of the property to be sold should be given." *Farnum v. Buffum*, 4 Cush. 260.

24. In another case, where the plaintiff claimed under a tax sale, the advertisement contained the following description, namely:

Name.	No. of Entry.	Original Proprietor.	Original Quantity	Watercourse.	Acres.	Rate	Tax.
Haines, John	4401	Haines, John	170.	Mad River.	73	2	3.922.

"In this case, the whole original entry was taxed to its then owner, Haines, and perhaps was sufficiently described by its number and watercourse; but ninety-seven acres had been transferred to another name, seventy-three acres still standing to Haines. What 73 acres? In common or separate? If separate, in what part of the lot does it lie? The answers to these questions materially affect the price. Without them no such information is communicated to the public as is calculated to produce a fair competition, and no prudent man will offer its value in his bid. The description, therefore, is not adapted to promote a fair sale, and it must be holden insufficient. *Lafferty's Lessee v. Byers*, 5 Ham. 458.

25. In another case the description was, "R. 4, T. 3, Sec. 13, p. N. half, 60 acres." By the court: "The tax title set up by the defendant cannot be sustained. The description in the duplicate and advertisement is too vague and uncertain. Sixty acres, part of the N. 1-2 of section 13." Which sixty acres? is an inquiry natural to be made. In *Lafferty v. Byers*, 5 Ham. 458, (it is held that such a description is too general. The tax sale must be held void. *Treow v. Emerick*, 6 and 7 Ohio, 161. So, "2-3 of block 4 in," &c., void for uncertainty. *Bidwell v. Coleman* 11 Minn. 78. So a notice of sale which embraces all lands upon which taxes are assessed, and is not restricted to lands which may be delinquent, is void. *Prindle v. Campbell*, 9 Minn. 212, 4 Sneed, 322; *Ronkendorff v. Taylor*, 4 Pet. 349.

26. Where the statute requires the amount of the tax due upon the land to be stated in the advertisement, an omission of this fact or a variance between the amount due and the sum named in the advertisement, will be fatal. *Corporation of Washington v. Pratt*, 8 Wheat. 681.

27. The advertisement should contain a particular statement of the amount of taxes due on each lot separately. The taxes of each are made several liens upon each. The taxes of each lot ought to be severally exhibited. *Corporation of Washington v. Pratt*, 8 Wheat. 681; Black. on Tax Titles, page 228.

28. When the advertisement stated the tax to be four dollars and twelve cents, when it was in fact only three dollars and thirty cents, the sale was held void. *Alexander v. Pitts*, 7 Cush. 503; 4 Pet. 349.

29. The advertisement should name the time certainly when the sale shall take place, also state the place where the sale is to be made. *Wilkins v. Huse*, 10 Ohio, 139; *Prindle v. Campbell*, 9 Minn. 212.

An advertisement of a sale for taxes, need not be posted in an unincorporated and uninhabited place. *Wells v. Burbank*, 17 N. H. 393.

30. When the statute is silent as to the form and contents of the advertisement, but directs generally that the collector shall give notice, the statute is to receive such a construction as will enable the delinquent to ascertain whether his land is advertised, the amount of the tax charged upon it, and the time and place when and where the sale will take place. Black. on Tax Titles, page 231.

31. Where the law requires the collector to state in the advertisement the names of the owners, if known, an omission to do so will invalidate the sale. If the name of the owner is unknown, then a more accurate and certain description of the lands will be exacted from the collector than in ordinary cases. This was held under a statute which required the name of the owner to be inserted, if known, otherwise a substantially accurate description of the land. *Farnum v. Buffum*, 4 Cush. 260, 266.

32. A misnomer of the real owner will invalidate the sale. *Alvord v. Collin*, 20 Pick. 418; *Sargent v. Bean*, 7 Gray, 125.

33. The notice must be published the full length of time required by law, or it will be void. *Sargent v. Bean*, 7 Gray, 125; *Early v. Doe*, 16 How. (U. S.) 610; *Farrar v. Eastman*, 1 Fairf, 191; S. C. 5 Greenlf. 345, and 8 Greenlf. 191.

34. Where the statute required "three successive publications in a newspaper three months prior to the sale," the last insertion must be three months prior to the sale. *Bussey v. Leavitt*, 3 Fairf. 378.

35. An advertisement in 'this class of cases, must be valid upon its face, and that if otherwise, extrinsic evidence cannot be admitted to explain or help it. *Alvord v. Collin*, 20 Pick. 418; *Fitch v. Pinkhard*, 4 Scam. 69.

36. The object is to secure competition, for the benefit of all concerned; and if the notice is so defective as not to give the proper information, the sale will be void. 2 Ohio, 233.

37. In all cases where it appears upon the face of the tax deed, when taken in connection with the law, that the full notice required has not been given prior to the sale, the deed is held void for all purposes. *Moore v. Brown*, 11 How. (U. S.) 414.

38. Where the law requires the advertisement to be published in several languages—for instance, in English and French, or English and German—the neglect of the collector to comply with this requisition will render the advertisement illegal, and the sale founded thereon void. *Young v. Martin*, 2 Yeates, 312; *Delogny v. Smith*, 4 La. 418.

39. A publication in extra sheets, which are circulated with the paper designated by law, is a legal notice; but when it appears that the extra sheets were not, in fact, sent to all of the subscribers of the paper, the advertisement will be regarded as void. *Davis v. Simms*, 4 Bibb. 465.

40. The strictness required in regard to the notice of the sale, is very strongly illustrated by the case of *Porter v. Whitney*, 1 Greenlf. 306, which was a writ of entry, where the tenant claimed under a tax sale, made twelve years prior to the trial. The facts were, that the sale was made by the collector of Brownfield, for the non-payment of taxes assessed by that town, that the land demanded was formerly a part of the town of Porter, and was annexed by law to Brownfield within three years next before the time of advertising the sale, but the name of Porter was not expressed in the advertisement. The statute declared that "when the name

of the place in which such lands lie, may have been altered, by any act of this commonwealth, within three years next preceding such advertisement, he (the collector,) shall express, not only the present name, but the name by which the same was last known." The sale was held illegal.

"The advertisement described the land as situate in Brownfield, it should have been more particular, and stated that it was situate in that part of Brownfield, which was formerly a part of Porter, and which had been annexed to Brownfield. This would have put the proprietor on his guard, and prevented all mistake and damage."

41. Notice to be posted in a "Public Place." When such is the requisition, the courts are extremely strict in requiring proof that the place of posting was in fact a public place of resort, calculated to give all of the notoriety to the sale, which the law evidently contemplated. *Cambridge v. Chandler*, 6 N. H. 271; *Tidd v. Smith*, 3 N. H. 178.

42. A notice remained up for the requisite time. When first posted, the place where it was put up was a public place; namely, a tavern—but on the 18th day of that month, it ceased to be a tavern, but the innkeeper remained in the building, and carried on the business of a shoemaker, in the identical room where the notice was posted. The court held that the place ceased to be a public one after the 18th day of January, and that consequently the sale was illegal. *Tidd v. Smith*, 3 N. H. 178.

43. In some of the states a personal notice to the owner is required, before a sale of his land is authorized; where this requirement has not been complied with, the sale has been held void. *Moulton v. Blaisdell*, 24 Me. (11 Shep.) 283; *Brown v. Veazie*, 25 Me. (12 Shep.) 359.

44. Proof of the advertisement depends upon the same general principles which relate to the other prerequisites of the law. The onus probandi rests upon the purchaser at the tax sale, or those claiming under him. The deed is not *prima facie* evidence that the sale was duly advertised. Where the law requires the advertisement to be recorded, the record alone can be resorted to for

the purpose of determining its existence and sufficiency. Parol evidence is inadmissible to supply any defect in the record, or to explain any uncertainties that may exist in it. And the courts are strict in requiring a rigid adherence to the requisitions of the law, as to the contents of the record; it must conform to the statute in all respects. Ante, chapter 3.

45. The law is not only well settled, but apparent to every one, that no presumption can be indulged in to supply a defect which appears upon the face of the advertisement. It may be stated as a general rule, that where an advertisement is illegal in any respect, the consent of the owner, having notice of the irregularity, cannot confer authority upon the officer to proceed with the sale. He derives his power from the law—and not from the owner of the land—and he must strictly conform to all its requisitions. *Farrar v. Eastman*, 1 Fairf. 191; *Porter v. Whitney*, 1 Greenlf. 306; *Scales v. Avis*, 12 Ala. 617.

46. The date of the advertisement is *prima facie* evidence as to the time when it was made and published. *Langdon v. Poor*, 20 Vt. 13.

47. Where a notice of sale, and the paper itself which contained it, were dated in 1836 instead of 1837, and parol evidence was offered to prove the mistake, the evidence was held incompetent. 4 Scam. 81.

The following abbreviations in the advertisement itself, have been sanctioned by the courts, upon the authority of the following cases, viz. “\$,” for dollar, “c.” “ct.” “cts.” for cent or cents, “m,” for mills, “Lt.” for lot, “Bk.” for block, “Tx.” for tax, “Vl.” for valuation, “T.” for township, “R.” for range, “Sec.” for section, “qr. sec.” for quarter section, and “pt.” for part, &c. *Goodall v. Harrison*, 2 Mis. 124; *Long v. Long*, 2 Blackf. 293; *Stevens v. Hollister*, 18 Vt. 293; *Atkins v. Hinman*, 2 Gilm. 444; *Blakeley v. Bestor*, 13 Ill. 714.

48. A description in an advertisement for a tax sale of “a piece of land set off by E. C. on settler’s lot No. 5, 128 rods long, and 38 rods wide—25 acres,” was held sufficient to support the sale. *Smith v. Messer*, 17 N. H. 420.

49. Notice of the sale in the manner provided by law is an essential prerequisite of a valid sale. *Jarvis v. Silliman*, 21 Wisc., 599.

CHAPTER XII.

OF THE AUTHORITY OF THE OFFICER TO SELL.

1. The power of sale does not attach until every prerequisite of the law has been complied with. *Minor v. Natchez*, 4 Smedes & M. 627, 628.

In a word, every act which can be regarded as a condition precedent to a valid sale, must precede the execution of the power in question; otherwise, there is no authority to sell, and the whole proceeding will be treated as a nullity. *Lessee of Holt's Heirs v. Hemphill's Heirs*, 3 Ham. 232.

2. The statute of New Hampshire required the assessors to deliver the tax list to the collector, on or before the thirteenth day of May annually; the collector was directed to deliver a copy of the list to the deputy secretary of State, on or before the eighth day of the next ensuing session of the general court; this copy was to be kept by the deputy until September 1, and on application of the collector, the deputy was to return to the former the copy. The power of the deputy to collect taxes continued until the return, that of the collector, until the sale. Where the collector sold the land before the copy of the list was returned to him by the deputy secretary, the sale was held void. Prior to this return, the collector had no means of ascertaining whether the owners were delinquent; the taxes may have been paid to the deputy secretary, and this may have been the very reason why no return was made. *Homer v. Cilley*, 14 N. H. 85; *Iron Manufacturing Company v. Barrow*, 3 N. H. 36.

3. Where the statute requires the tax list to be delivered to the collector, on or before a particular day, and this requirement is not conformed to, the collector has no authority to sell. *Proprietors of Cardigan v. Page*, 6 N. H. 182.

4. The statute of Maine provided, that when no person shall appear to discharge the taxes duly assessed on lands belonging to non-residents, "within nine months from the date of the assessment, the collector shall make a true copy of so much of the assessment as relates to the taxes due upon such real estate, and certify the same to the treasurer of the town or plantation." The power of sale was vested in such treasurer. In *Flint v. Sawyer*, 30 Me. 226, it appeared that the assessment was dated August 14, 1844, and the return of the non-resident list was made by the collector to the treasurer, May 13, 1845. The sale was held void. By the court: "When a statute requires an act to be performed in a certain time from the date of some transaction, the day of such date is excluded in the computation of the time. The collector should have waited during all of the business hours of the 14th day of May, 1845, for the owner of the land to pay the tax upon it, before he made his certificate to the town treasurer. The owner of the land was entitled to the full term of nine months, in which he could make his payment without costs. Besides, the taxes may have been paid on the 14th, within the nine months allowed therefor, and the certificate of the collector still be true."

5. The statute of Maine required the sale to be made within two years from the date of the warrant to collect. In 1838, *Usher v. Taft*, 33 Me. 199, the warrant was dated July 25, the advertisement was published June 6, 1840, and the sale was made Oct. 10, 1840. In support of this sale, it was insisted that a tax sale was made up of the seizure of the property, the publication of the notices, and the striking off the land to the highest bidder; and that if the seizure be made within two years from the date of the warrant, the analogies of the law authorized the sale to be completed afterwards; that the sale had relation to the seizure; that in case of a sale under execution, the sale might take place afterwards. The court, however, held the sale void.

6. When the statute is silent as to the verification of the list, or other document, which constitutes the authority of the officer to sell, by the oath of the officer who is required to make it, no such path is necessary. The oath of office, and the liability of

the officer to parties injured by a false list, constitute the only security of the citizen in such cases. *Hollister v. Bennett*, 9 Ohio, 83.

7. The collector can sell such, and only such land for taxes as the law gives a lien upon, and the lien attaches to such, and only such land, as are legally assessed, and to the specific and definite parcels, upon which the tax is laid. If there is no definite parcel taxed, there can be no lien; and if no lien there can be no legal sale. *Green v. Lunt*, 58 Me.

CHAPTER XIII.

OF THE DISTINCTION BETWEEN CONDITIONS PRECEDENT AND DIRECTORY REQUIREMENTS.

1. Courts do not sit for the purpose of granting favors to parties, but to administer justice to them, according to the law of the land. While this general principle is universally conceded, it has been held that many requirements of a law may be regarded as directory. *Mussey v. White*, 3 Greenlf. 290; *Marchant v. Langworthy*, 6 Hill, 646.

2. The general rule undoubtedly is, that where a statute specifies the time within which a public officer is to perform an official act regarding the rights and duties of others, it will be considered as a directory requirement, unless the nature of the act to be performed, or the language used by the legislature, show that the designation of the time was intended as a limitation upon the power of the officer. Where there is nothing in the nature of the power conferred, or in the manner of giving it, which justifies the inference that the time was mentioned as a limitation, it may be exercised after the day fixed. By a directory statute, it is not to be understood that no duty is imposed to do the act at the time specified, in the absence of a satisfactory reason for not then doing it, but simply that the act is valid if done afterwards; while a peremptory law requires the act to be done at the time specified, and at no other. *Pond v. Negus*, 3 Mass. 230; *Thames Manufacturing Co. v. Lathrop*, 7 Conn. 550; *People v. Peck*, 11 Wend. 604.

3. A statute directing a tax-collector to keep property seized four days before advertising, and at the expiration of that time to sell it, giving six days notice, does not require him to act at the exact expiration of the four and six days. *Clemons v. Lewis*, 36 Vt. 673.

4. In New Hampshire, the direction in the tax statutes that the money shall be collected and paid into the treasury within a certain time, is directory merely, and an assessment of the tax after such time is valid. *Wells v. Burbank*, 17 N. H. 393.

5. It is admitted there are cases where the requirements may be deemed directory. But it may be safely affirmed, that it can never be where the act, or the omissions of it, can by any possibility work advantage or injury, however slight, to any one affected by it. In such cases it can never be omitted. *Mayhew v. Davis*, 4 McL. 213.

6. It is of the essence of justice and natural equity that when a forced sale of property is made under statutes, *all* formalities, which have the *semblance of benefit* to the owner, should be strictly complied with. *Sharp v. Johnson*, 4 Hill, 99; *Corwin v. Merritt*, 3 Barb. 343.

7. One rule is very plain and well settled, that all those measures which are intended for the security of the citizen, for insuring an equality of taxation, and to enable every one to know for what polls, and for what real and personal estate he is taxed, are conditions precedent, and if they are not observed, he is not legally taxed; but many regulations are made by statute, designed for the information of assessors and officers, and intended to promote method, system, and uniformity, in the mode of proceeding, the compliance or non-compliance with which does, in no respect, affect the rights of tax-paying citizens; these may be regarded as directory. *Torry v. Millbury*, 21 Pick. 64.

8. 1st. Where the statute, under which the sale is made, directs a thing to be done, or prescribes the form, time, and manner of doing anything, such thing must be done, and in the form, time, and manner prescribed, or the title is invalid; and in this respect the statute must be strictly, if not literally, complied with. 2nd. But in determining what is required to be done, the statute must receive a reasonable construction; and when no particular form or manner of doing a thing is pointed out, any mode which effects the object, with reasonable certainty, is sufficient; and in judging of these matters, the court is to be governed by such rational rules of

construction as direct them in other cases. *Chandler v. Spear*, 22 Vt. 388.

9. Revised Statutes of Maine, 1857, c. 3, § 85, it is provided that the assessors shall require the collector to give bond for the faithful discharge of his duty, and this provision is held to be directory. *Scarborough v. Parker*, 53 Me. 252.

10. This seems to be the safer and most equitable rule to adopt; a requirement which tends to the security of the owner, or which possesses the semblance of benefit to him, should be faithfully complied with; while those which possess no intrinsic merit, and the omission of which works no manner of injury to the owner of the estate, ought not to defeat the title of the purchaser. Such seems to be the true principle to be deduced from the decided cases, if it be once conceded that any provision of a statute may, under any circumstances, be regarded as directory. *Black. on Tax Titles*, page 263.

CHAPTER XIV.

OF THE SALE OF THE LAND.

1. 1st. *The sale must be a public, and not a private one.* The object of the law is to secure a fair competition of the biddings. If a secret sale could be sustained, the policy of the legislature would be defeated in this respect. *Cutler v. Brockway*, 8 Casey, (Penn.), 45; *Keene v. Houghton*, 19 Me. 368.

Land struck off to *A* for the taxes and costs, he being the highest bidder. Afterwards, and before the proceedings were returned or recorded, in pursuance of the statute, *B* was substituted as a purchaser, in lieu of *A*, and the sale so returned is illegal. The collector had no authority to make the substitution. *Keene v. Houghton*, 19 Me. 368; *Black. on Tax Titles*, page 265.

2. In the execution of a power given by statute, there must be a strict conformity to its provisions, or the proceedings will be ineffectual. The person authorized cannot adopt a different mode of proceeding, which he may judge would accomplish the same object in a different manner, and be more beneficial to those interested. The collector in this case is authorized to deed only to the highest bidder, that is, the person who would bid the highest price for the land by taking the least quantity of it, and pay the amount due. *Black. on Tax Titles*, page 265.

3. 2d. *The sale must take place at the precise time fixed by the law, or notice, otherwise it will be void.* *Moore v. Brown*, 11 How (U. S.) 414; see *Noyes v. Haverhill*, 11 Cush. 338; *Pierce v. Benjamin*, 14 Pick. 356.

4. If the land was sold on a day different from that named in the advertisement, some reason consistent with the law must be shown, why it was so sold, and this should appear from the return of the officer effecting the sale. The object of an advertisement

is that the public may be notified of the time and place of sale, that opportunity may be given for competition. The object is not attained if an officer may advertise on one day and sell on another. Such a proceeding cannot be sustained. *Wilkins's Heirs v. Huse et. al.*, 10 Ohio, 139.

5. Where a sale of land for taxes is not commenced on the day specified in the notice of sale, the land cannot be sold at a subsequent time. *Prindle v. Campbell*, 9 Minn. 212.

6. 3d. *It is equally important that the sale should be made at the place designated in the advertisement.* If the notice is of a sale to take place at the court-house door, and it is made at some private room or house in the county town, or elsewhere in the county, there can be no question but that the sale is void. It is just as important that the owner should know where to go in order to arrest the sale by the payment of the tax, and that those desiring to purchase should know where to find the officer exercising the power of sale, as it is that the time named in the advertisement should be literally adhered to in the making of the sale. There are no express adjudications upon this question, but it is conceded by a respectable authority, and indeed seems a self-evident proposition. (If the statute requires the sale to be made "before the court-house door," a sale made inside the court-house is not good.) *Doe ex. dem. Kelly v. Craig*, 5 Ired. 129; *Rubey v. Huntsman*, 32 Mis. 501.

7. It is presumed, that without express authority, conferred by statute, to adjourn a sale from day to day, the officer must sell all of the lands embraced in his list on the day named in the advertisement, or suspend the sale, so far as those which remain are concerned. Still, it is difficult to perceive any substantial reason why the general principle—that when a power is conferred by statute, every incident essential to carry the power into complete effect, goes with it by implication. *Mitchell v. Maxwell*, 2 Florida, 594.

8. But in the case of *Sibley v. Smith*, Gibbs, 490, it was held, that this principle of taking power by implication, was not applicable in the construction of this class of statutes; that being in derogation of common law, and authorizing proceedings, the effect of

which is to divest the citizen of his title to real estate, such statutes should be construed strictly, although made for the public benefit; that their provisions cannot be enforced further than they are clearly expressed; that the officers acting under them can take no power that is not expressly delegated to them; that they can assume no power by implication, and that when their acts are not clothed with the authority of the statute, they are of no validity whatever.

9. The sale to be valid must be made to the "highest bidder," which ordinarily means the person who offers to pay to the collector for the land put up, the largest sum of money. Black. on Tax Titles, page 274.

10. In most of the States, however, the highest bidder is he who will pay the taxes, interest, and costs due upon the tract offered for sale, for the least quantity of it. Lovejoy v. Lunt, 48 Me. 377.

11. Where the officer failed to state in his return that he sold the land "to the highest bidder," the sale was held void. And oral evidence would undoubtedly be inadmissible for the purpose of supplying the omission. Proprietors of Cardigan v. Page, 6 N. H. 182; Bean v. Thompson, 19 N. H. 290; Kellogg v. McLaughlin, 8 Ohio, 114.

12. A failure to recite the fact that the grantee in the deed was the highest bidder, would render the deed void; and especially would it be deprived of its legal effect as evidence, in those States where a deed executed in the form prescribed is declared to be *prima facie*, or conclusive, evidence of a title in the purchaser at the tax sale. Per Judge Tucker in Kinney v. Beverly, 2 Hen. and Munf. 531; Maxcy v. Clabaugh, 1 Gilman. 26.

13. The sale of a tract of land for more than the amount due upon it, is not void for that reason; under a statute which required a sale to the person who would pay the taxes for the least quantity of the land upon which it was assessed, the owner is not prejudiced by such a sale, inasmuch as he is only bound to pay the tax, interest, and cost due upon the land when he redeems from the sale. Peters v. Heasely, 10 Watts, 208.

14. The sale must be for cash; if credit is given to the pur-

chaser it is absolutely void. See *Donnel v. Bellas*, 10 Casey (Penn.), 157; *Cushing v. Longfellow*, 26 Me. 306; *Longfellow v. Quimby*, 29 Me. 196.

15. Where a part of the land sold is liable to sale, and the residue is not, the sale is void in toto. *Moulton v. Blaisdell*, 24 Me. 283; *Hayden v. Foster*, 13 Pick. 492; *Wallingford v. Fiske*, 24 Me. 386; 5 N. H. 196; 6 N. H. 225; 15 Mass. 159.

16. The sale must be according to the parcels, and description contained in the list, and the other proceedings, or it cannot be sustained. Especially must it conform to the list, as that constitutes the basis of all the subsequent proceedings. *Black. on Tax Titles*, page 278.

17. If those proceedings are irregular, he possesses no authority at all; if regular, the law confers upon him no power to change them. He acts at his peril in making a sale if they are irregular, and if regular, they constitute his only guide in advertising, selling, and conveying the land affected by them. *Pitkin v. Yaw*, 13 Ill. 253; *Willey v. Scoville*, 9 Ohio, 43.

18. In *Andrews v. Senter*, 32 Me. 394, it appeared that two lots were listed and advertised for sale separately, but the collector—as it appeared from his return of the sale—sold them together for the aggregate sum due upon both, and the sale was held void. *Morton v. Harris*, 9 Watts, 319; *Wallingford v. Fiske*, 24 Me. 386.

19. Each right, number of lot, or division must be advertised and separately sold at public auction. It is also held, that the fact that the several lots, tracts, or parcels, belong and are assessed to the same person, does not dispense with the law, or excuse a deviation from it. *Shimmin v. Inman*, 26 Me. 228.

20. Where a tract of land is assessed against tenants in common, and one of them pays the tax on his undivided share, the interest of the other may be sold to satisfy the residue of the assessment. *Ronkendorff v. Taylor*, 4 Pet. 362.

21. The authority usually conferred is to sell the land upon which the tax is due; or so much thereof as may be necessary to satisfy the charge; or to sell a certain interest less than a free-

hold out of the estate ; or to sell to one who will bid the least quantity to be located on a particular side of the tract, or in a particular corner of it ; or to sell as many acres of the tract as may be sufficient to satisfy the tax, the boundaries of which are to be ascertained by an official survey prior to the consummation of the purchaser's title. *Loud v. Penniman*, 19 Pick. 539.

22. Where several parcels of land, belonging to the same person, are separately assessed, each parcel is liable for its own specific tax and no more. And the purchaser is entitled to a deed which so states the sale. *Donahoe v. Richardson*, 21 Mis. 420.

23. The lien created by the statute is upon each tract for its own tax, and it cannot therefore be sold to satisfy the tax due upon the others. Where twenty-two distinct parcels of land, owned by one individual, and situate in the same town, were valued and taxed separately, but one of them was sold to pay the tax upon all of them, the sale was held void. *Hayden v. Foster*, 13 Pick. 492.

24. The quantity of land that may be sold by the officer, depends upon the phraseology of each particular statute. *Black. on Tax Titles*, page 283.

25. The statute of New Hampshire required that so much of the delinquent's estate should be sold, "as will be sufficient to pay the taxes and incidental charges" upon it. *Ainsworth v. Dean*, 1 Foster, 400 ; *Loomis v. Pingree*, 43 Me. 299.

26. The revised statutes of Massachusetts provided that the collector shall sell "so much of the real estate, as shall be sufficient" to discharge the tax and charges ; but if in the opinion of the collector "any parcel of real estate cannot be conveniently divided, and a part thereof set off without injury to the residue, he may sell the whole of the land itself," &c. Under these provisions it was recently held, that the collector could adopt only one of two courses ; either sell just enough to pay the tax and charges, or, if in his opinion not capable of division, sell the entire tract taxed ; he could not adopt a middle course and sell more than sufficient to pay the tax and charges, but less than the whole lot taxed, unless it also appeared that the lot actually sold could not

be again divided without injury to the residue. *Crowell v. Goodwin*, 3 Allen, 535.

27. But this rule was changed by the Gen. Stats. ch. 12, § 33, it then being left entirely to the collector's option to sell the whole or any part of the estate.

28. When, after an assessment is made, the county in which the proceeding was had is divided, the collector of the old county has power to sell land lying in the territory embraced in the newly created county. This is in conformity with the general principles of the law in analagous cases. 5 Watts, 87 ; 16 Ohio, 466 ; 17 Ohio, 135—143 ; 16 Mass. 86 ; 4 Mass. 389.

29. If the record of a tax sale show that by its terms the highest bidder was to be the purchaser, and then shows that A, was the purchaser, that is evidence that he was also the highest bidder. *Smith v. Messer*, 17 N. H. 420.

CHAPTER XV.

OF THE CERTIFICATE OF SALE.

1. When a sale is made, the officer, immediately upon the receipt of the purchase-money, is authorized to execute and deliver to the purchaser a deed conveying the land to him, or deposit the deed, with a certificate of sale, in the town clerk or treasurer's office where the land lies, to be delivered when the right of redemption expires, which vest an absolute estate in the purchaser on condition that the owner does not redeem the same within the time prescribed by law. In all of these cases the purchaser acquires only a contingent interest in the estate purchased, liable to be defeated in the event of a redemption, and if no redemption is made, an absolute and indefeasible title becomes vested in him.

2. The person who buys land at a tax sale is denominated the purchaser, and no title whatever to the land sold vests in him until at the expiration of the right of redemption. Prior thereto he has only a lien upon the land for the repayment of the amount of the tax paid, with interest; he has no right to interfere with possession of the owner; he cannot enter upon the land for any purpose whatever, nor can he control the rents and profits. *People v. Hammond*, 1 Dougl. 276.

3. The right of a purchaser to a deed, in pursuance of the sale and certificate, when the time of redemption expires, is a vested one; and the legislature cannot, without a violation of the contract between the State and purchaser, repeal the authority of the officer to execute and deliver a deed to him. Nor can the legislature extend the time of redemption, after the rights of the purchaser have attached. Those rights attach when his bid is accepted and he pays the purchase money, and the statute then in

force constitutes the law of this contract, by it alone are his rights and duties to be determined. *Bruce v. Schuyler*, 4 Gilm. 274, 278; *Dikeman v. Dikeman*, 11 Paige, Ch. 484; *Maxcy v. Clabaugh*, 1 Gilm. 26.

4. Where the law requires the purchaser or officer to record the certificate or lodge the deed in a particular office, with the evident design of giving notice of the sale to the former owner, the requisition must be strictly complied with. *Reeds v. Morton*, 9 Mis. 878; *Ives v. Lynn*, 7 Conn. 505.

5. In several of the States, a deed is immediately executed and delivered to the purchaser, conveying to him a present estate, with a redemption clause annexed. If no redemption is made within the time and in the manner prescribed by the statute, the estate becomes *ipso facto* discharged of the condition; if the sale is redeemed from, the estate of the tax purchaser is defeated. *Black. on Tax Titles*, pages 297, 298.

CHAPTER XVI.

OF CONDITIONS SUBSEQUENT TO THE SALE.

1. The statutes of several of the States require either that the ministerial officers of the law, or the purchaser shall, within a limited time after the sale has taken place, perform certain duties or acts intended for the protection of the former owner, the non-performance of which invalidates the sale. Black. on Tax Titles, page 300.

2. Where the law requires the officer who made the sale, to return a history of his proceedings, it must be done at the time and in the manner prescribed, or the sale is invalid. The return must show the description of the land, the name of the purchaser, the time of the sale, and all other particulars connected with it which the law requires. *Lane v. James*, 25 Vt. 481.

3. The statute of Maine required the collector to make return of "his particular doings in the sale," to the town treasurer, within thirty days after the sale. Under this statute it has been held, that unless the return is made within the time limited, the title of the purchaser cannot be sustained. In this case the return did not designate the land sold, and the court held, that even if made in the time prescribed, it was void, for want of a specification of the land; "the owner could not ascertain from it whether any, or what land of his had been sold." *Andrews v. Senter*, 32 Me. 394; *Pinkham v. Morang*, 40 Me. 588; *Lane v. James*, 25 Vt. 482.

4. And in Maine, if the whole tract is sold, the return should state that it was necessary to sell the whole, or the sale is not valid. *Lovejoy v. Lunt*, 48 Me. 377; *Loomis v. Paisee*, 43 Me. 311.

5. Under the statute of New Hampshire, it was held, that the return must show that the sale was made to the highest bidder. The Maine statute made it the duty of the collector, "to return to

the town clerk his particular doings in the sale of unimproved lands of non-resident proprietors, within thirty days after the day of sale." In *Shimmin v. Inman*, 26 Me. 228, the return was in this manner:

HOWLAND, February 6th, 1836.

Charles Davis bought of Daniel Wood, collector, lots of land as follows:

Watercourse.	No. of the Lots.	Range.	No. Acres.	Taxes and Charges.
On Penobscot River.	16, 17, 18.	—	230.	\$5.52.

Howland, February, 10th, 1836.

"DANIEL WOOD,

Collector of Howland for the year 1835."

This return was held void because the description of the land was indefinite.

6. The statute of Vermont provided, that "every collector shall, within thirty days after completing the sale, &c., cause his proceedings to be recorded in the proper office for the recording of deeds." Where there was a failure on the part of the collector to perform this duty, the sale was held void. So where the sale was completed July 31st, 1789, and the proceedings were not lodged until March 4th, 1800. *Richardson v. Dorr*, 5 Vt. 9; *Giddings v. Smith*, 15 Vt. 357; *Lane v. James*, 25 Vt. 482; *Taylor v. French*, 19 Vt. 49.

7. The law required the collector to keep a record of his proceedings, and within thirty days next after the ending of his vendue, lodge a true and attested copy of his sales, together with his warrant, tax bill, and advertisement, with the town clerk, whose duty it was made to record the same. The collector failed to perform this duty, and the tax sale was held void. *Sumner v. Sherman*, 13 Vt. 609.

8. When the proceedings were required to be recorded "in the proper office for recording deeds," and they were recorded in separate books, provided for the special purpose, and not in the regular books of the office, this was held to be a compliance with the law. *Isaacs v. Shattuck*, 12 Vt. 668.

9. The statute of Vermont directed the town clerk to record the collector's advertisement, and certify whether the same had been published according to law. This requirement not having been complied with, the tax sale was held illegal. *Judevine v. Jackson*, 18 Vt. 668. Purchasers and land-owners are to look to the records to ascertain whether a vendue is correct and valid, and whether it is necessary for the owner to redeem. The records must contain full and plenary evidence in this particular.

10. The place of the publication of one of the newspapers did not appear in the record made by the town clerk, and the sale was defeated for this omission. *Culver v. Hayden*, 1 Vt. 359; reaffirmed in *Clark v. Tucker*, 6 Vt. 181.

11. In another case, the record omitted the date of the newspaper and its place of publication, and the sale was held void. *Coit v. Wells*, 2 Vt. 318; *Spear v. Ditty*, 9 Vt. 282.

12. In another case the officers of collector and town clerk were held by the same person—Jonas Stone—and in certifying upon the books of the town clerk the verity of the record, he signed his name thus, "Jonas Stone, Collector," and the tax sale was declared illegal for this wrong designation. *Isaacs v. Shattuck*, 12 Vt. 668.

13. The statute requires the clerk to record the advertisements themselves. This is imperative. *Carpenter v. Sawyer*, 17 Vt. 121.

14. In another case, the court held that the record must be verified by the official signature of the clerk. *Taylor v. French*, 19 Vt. 49.

It is true that no essential requisite will be presumed; but to a certain extent presumptions may, and must be made. *Spear v. Ditty*, 8 Vt. 419.

15. It was objected in one case that the place of publication did not certainly appear in the record. The law required the record to state "the place where such paper was printed." The record showed that the advertisement was "published at Windsor." There was a town and county in Vermont by that name. It was insisted that the place "at Windsor" was equivocal, but the court held otherwise. *Isaacs v. Shattuck*, 12 Vt. 668.

16. In *Bellows v. Elliott*, 12 Vt. 569, it appeared from the record that the three newspapers in which the collector's advertisement appeared, were published at Danville, Rutland, and Windsor, but the State was not named, and the court presumed that these towns were in Vermont.

17. A tax sale is not avoided by the collector's omission to file the newspapers containing the advertisements in the town clerk's office within ten days after the sale. *Smith v. Messer*, 17 N. H. 420.

CHAPTER XVII.

OF THE AUTHENTICATION OF THE DIFFERENT DOCUMENTS.

1. The rule is well settled, that every public document, which is required by law, to be executed by a public officer, and preserved as a memorial of the facts recited in it, must be verified by the official signature of the person who made it. The object of the rule is the identification of the document as an official act, executed by the authority of law; and its spirit is answered only, when the official character of the person making it is established, and the document appears upon its face to be an official act, attested by the signature of the officer. Black. on Tax Titles, page 342.

2. And in this country, every officer, from the president down to an overseer of the poor, verifies in this manner his official acts. The rule extends to all official documents connected with the sales of land for the non-payment of taxes. Black. on Tax Titles, page 343.

3. In *Spear v. Ditty*, 9 Vt. 282, the defendant relied upon a tax title, and offered in evidence the record of the town clerk, headed "collectors advertisements." The record showed that the advertisements were simply signed "E. Spaulding," without the addition of the word "Collector." In the form of the advertisement prescribed by law, the official title was added. The court held the sale void for the omission in the record of the town clerk. The statute form must be strictly followed. Even a known public officer must so sign every official document. It must appear on publication, by what power, and in what capacity the person acts. And this cannot be supplied by the record, headed "collectors" advertisements. *Isaacs v. Shattucks*, 12 Vt. 668.

4. It has already been shown that the assessment list must be verified by the official signatures of the officers charged by law with the duty of making it. *Johnson v. Goodridge*, 15 Me. 29; *Colby v. Russell*, 3 Greenl. 227; *Foxcroft v. Nevens*, 4 Greenl. 72; *Kellar v. Savage*, 20 Me. 199.

5. A commitment prefixed to and specifically referring to the lists of assessments and signed by a majority of the assessors is a sufficient authentication and compliance with the statute. *Lowe v. Weld*, 52 Me. 588.

6. Where the official character of the act does, with reasonable certainty, appear upon the face of the document, slight variations and omissions will not destroy its validity. Thus, in *Isaacs v. Wiley*, 12 Vt. 674, where the record of the advertisement showed the name of Luther W. Brown as collector, whereas Luther H. was appointed to that office, it was held sufficient, by the court. We think it more rational to treat the names as being the same, but capriciously varied to suit the taste or whim of the recording officer.

7. In *Sheldon v. Coates*, 10 Ohio, 278, James Hillman was sheriff of Butler county, and ex-officio collector of taxes. The certificate of sale signed by him was in his capacity of collector, and it was held valid. By the court: "It is a general rule, in sales by public officers, that where there is a sufficient power to warrant a sale, a slight variance or omission will not be held to be material." 5 Cow. 530.

8. It has been shown, that where the same person holds different offices, and the law requires him to act in each of his official characters in the course of a tax proceeding, and he gives the wrong designation of office in authenticating an act, this stands upon the same principle as if he had added neither official designation. *Black. on Tax Titles*, page 347.

9. Production of what purport to be the assessment rolls without proof of their authenticity or the genuineness of the assessors signatures, is not sufficient evidence on which to rest a tax title. *Stevens v. Palmer*, Bosw. (N. Y.) 60.

10. When a certificate appended to a rate bill is dated prior to the appointment of the officer making the certificate, and thus is evidently a clerical error, it will not invalidate the instrument. *Goodwin v. Perkins*, 39 Vt. 598.

CHAPTER XVIII.

OF THE LOCATION OF THE LAND SOLD.

1. In sales of this character the law requires a specific location, and certain description of the land sold, in all cases where a less quantity than the entire tract offered, is struck off. Black. on Tax Titles, page 353.

2. Where a conveyance is made of a certain number of acres, without locating it in any particular part of the tract, the conveyance confers no election upon the grantee to locate the quantity purchased, but the deed must be held void for uncertainty. Thus, a deed of "10 acres in lot 26, in the 11th range, in the town of Columbia," is void for uncertainty. *Haven v. Cram*, 1 N. H. 93; *Jackson v. DeLancey*, 11 Johns 273; *Harvey v. Mitchell*, 11 Foster, 575.

3. If the description of the land assessed is definite and accurate, and is inserted in the tax deed, and the purchaser at the sale buys a portion of it, such description in the tax deed of the portion sold as will enable its boundaries to be determined by extrinsic evidence, applying the description in the deed to the land, is sufficient. *Brunn v. Murphy*, 29 Cal. 326.

CHAPTER XIX.

OF THE AMENDMENT OF THE PROCEEDINGS.

1. It may be laid down as a general rule, that the power to correct an error committed in the progress of a proceeding exclusively belongs to courts of justice, and has no application whatever to the proceedings of ministerial officers. Black. on Tax Titles, page 356.

2. The acts of ministerial officers are to be tested by the law which authorized them. When the act is completed their power is *functus officio*, and if in the record, return, or other evidence of their acts, they have failed to conform to the requisitions of the law of the land, or to state the facts as they actually transpired, the error cannot be obviated by an amendment, because their power on the subject is exhausted. By the record, as originally made, their acts must stand or fall. Black. on Tax Titles, page 357.

3. So an uncertain description in a tax deed cannot be amended after the sale by the collector. *Roberts v. Chan Tin Pen*, 23 Cal. 259. When a tax roll showed an error on its face of ten cents in the aggregate amount of tax carried out opposite a certain parcel of land, which error the county treasurer corrected before sale, it was held that as this did not injure the owner it must be disregarded. *Case v. Dean*, 16 Mich. 12.

4. The general rule is, that amendments of records are made with a saving of the rights of third persons, acquired since the existence of the defect. To apply this rule, to all cases of defects in sales of land for taxes, would, in effect, be very nearly denying a right to amend; as the owner would attempt to defeat any amendment, by conveying to some friend, who would bring a suit

in his behalf. It would, at least, be necessary to confine the application of the principle to cases where the land had been actually conveyed *bona fide*. Gibson v. Bailey, 9 N. H. 168.

5. Where what is necessary is, although not formally stated, so far set down as to lead to a belief that a correct record might have been made, there seems to be no reason why a purchaser, who has access to the records, should not take it, subject to a right to have the record put in form, if the truth will warrant it. Where, on the other hand, nothing appears upon the record in relation to any particular fact necessary to make out a title, nor is anything set down from which it is naturally to be inferred that the fact existed, a *bona fide* purchaser ought not to have his title defeated by supplying a record instead of amending a record. The power is confined to cases where the law has, in fact, been complied with by the officers, but a record of their proceedings has been imperfectly made up, and where sufficient evidence of the compliance appears upon the face of the record, either in express terms, or by legitimate inference, from the facts actually stated. Indeed, in such cases, the court would uphold the title of the purchaser, without any amendment at all; treating all defects as amended, which, according to the general principles of the law, might be amended. Black. on Tax Titles, page 359.

6. Such was the doctrine asserted in Atkins v. Hinman, 2 Gilm. 451, where, in a collateral action, amendments of the tax record were permitted in the Circuit Court, and the Supreme Court sustained them upon the ground, that they were only the correction of clerical mistakes, and could prejudice no person's right; that they brought no new matter into the case, and gave no additional efficacy to the proceedings, but simply put them in stricter conformity to the provisions of the statute.

7. It is not allowable, in any case, for a ministerial officer, either with or without the permission of a superior court, so to amend his record of the proceedings, as to render a sale valid, which was not valid before, or to vest a title in the purchaser, or to divest the title of the owner, if the sale was not already perfect.

Judevine v. Jackson, 18 Vt. 470 ; Langdon v. Poor, 20 Vt. 13 ; 7 Greenl. 147.

8. In no case will an amendment be allowed, except upon notice to the parties in interest. O'Conner v. Mullen, 11 Ill. 57, 116. .

9. And in every instance there must be something upon the face of the proceedings to amend by—something to show that what is sought by the amendment was originally designed, but has been omitted by mistake or misprision. Luke v. Morse, 11 Ill. 587.

10. For a description of the land the collector must obtain his information from the assessment, he has no authority to add or to take from it. Nor can the assessors after the completion of the tax add to the description so as to make that certain which was before uncertain. The assessment must be complete in and of itself as much as a deed or contract. Green v. Lunt, 58 Me.

CHAPTER XX.

OF THE TAX DEED.

1. The tax deed is the instrument, whereby the officer of the law undertakes to convey the title of the rightful proprietor to the purchaser at the tax sale. This deed, according to the principles of the common law, is simply a link in the chain of the grantee's title. It does not *ipso facto* transfer the title of the owner, as in grants from the government, or in deeds between man and man. The operative character of it depends upon the regularity of the anterior proceedings. The deed is not the title itself, nor even evidence of it. Its recitals bind no one. It creates no estoppel upon the former owner. No presumption arises upon the mere production of the deed, that the facts upon which it is based, had any existence. When it is shown, however, that the ministerial officers of the law have performed every duty which the law imposed upon them—every condition essential in its character—then the deed becomes conclusive evidence of title in the grantee, according to its extent and purport. Black. on Tax Titles, page 362.

2. In some instances the deed is declared by statute to be *prima facie* evidence, either of all the facts recited in it, or of a strict compliance, by the officers, with every requisition of the law. In all such cases, the deed is evidence of title to the extent of the interest attempted to be conveyed. But the instant it is shown, by the party claiming adversely to the deed, that any substantial prerequisite of the law has not been complied with, the *prima facie* character of the deed is destroyed, all of its presumptions overthrown, and the deed becomes mere "waste paper." *Sibley v. Smith*, 2 Mich. (Gibbs) 486; *Graves v. Bruen*, 11 Ill. 431; *Turney v. Yeoman*, 16 Ohio, 24.

3. The *prima facie* character of the deed, as established by the statute, being thus overthrown, the principle of the common law again attaches to the transaction, and the grantee in the tax deed, or those claiming under him, must prove, by satisfactory evidence, the regularity of the proceedings. *Graves v. Bruen*, 11 Ill. 431; *Sibley v. Smith*, 2 Mich. (Gibbs) 486.

4. It is essential to the validity of a tax deed that it should be delivered by the officer, who is intrusted with the power of executing it, and that it should be accepted by the grantee named in it, or by some person authorized by him to receive it. In this respect, it stands upon the same footing as deeds executed between private individuals. *Black. on Tax Titles*, page 365.

5. When the form of the deed has not been prescribed by law, but the statute simply authorizes the execution of a deed of conveyance to the purchaser, any deed, which, according to the rules of the common law, would be sufficient to transfer the title of the former owner, and vest the estate in the purchaser, is regarded as an operative mode of conveyance, provided it recites the power under which it was made, and is accompanied by proof that the law was strictly complied with. But when the statute prescribes the particular form to be observed in the execution of the deed, that form becomes substance and must be strictly pursued or the deed will be held void. *Chandler v. Spear*, 22 Vt. 388; *Brown v. Hutchinson*, 11 Vt. 569; *Spear v. Ditty*, 8 Vt. 419; 22 Pick. 387; 11 Mass. 281.

6. The date of the deed may be proved by parol, and in the absence of evidence, it will be presumed to have been made at the proper time. *Thompson v. Schuyler*, 2 Gilm. 271.

7. The law will presume that a deed was delivered on the day of its date. 2 Blackst. Com. 304; 2 Johns. 230.

8. Where the statute is silent as to the acknowledgment of the deed, it is not essential to its validity. *Black. on Tax Titles*, page 368.

9. The acknowledgment only dispenses with common law proof of the execution of the deed. *Graves v. Bruen*, 1 Gilm. 167; *Thompson v. Schuyler*, 2 Gilm. 271.

10. Whether the tax deed must be recorded as against subsequent purchasers from the former owner, is a question upon which the authorities are divided. The affirmative is maintained in Vermont and Massachusetts. *Allen v. Everts*, 3 Vt. 10; *Tilson v. Thompson*, 10 Pick. 359.

11. This is an important question, and depends upon the fact, whether a tax title is a derivative or an original one. Black. on Tax Titles, page 369.

12. When the statute, under which the proceeding takes place, in express terms requires the record of the tax deed, a compliance with it, is as important as that of any other requisition of the law. The purchaser can acquire no right whatever to the estate, until the time of redemption has elapsed. Black. on Tax Titles, page 369.

13. The officer delivers, and the purchaser accepts, the deed without prejudice to the rights of the former owner, except where the proceedings have been strictly regular. Black. on Tax Titles, page 371.

14. The deed may be delivered by the successor, because it is an official act connected with the officer, and not a personal trust reposed in the man who was the incumbent of the office at the time of the sale. Black. on Tax Titles, page 372.

15. The deed must be made to the purchaser at the tax sale, unless the statute authorizes a transfer of the bid, or an assignment of the certificate of sale.

The officer selling has no authority to substitute the name of a third person for that of the successful bidder, even where the latter consents to it. Black. on Tax Titles, page 374.

16. Where a sale for taxes takes place during the lifetime of the owner of the estate, and he dies before the period of redemption expires, it is regular to execute and deliver the deed, notwithstanding the intervention of his death. In this class of cases, the conveyance is not made in the name of the proprietor, nor under the authority derived from him, but in the name of the State or the officer, in virtue of the authority with which the latter is invested by law. *Curry v. Fowler*, 3 A. K. Marsh, 504.

17. A tax deed, which upon its face, bears evidence of a non-compliance with a substantial requisition of the law, is a nullity. *Farrar v. Eastman*, 1 Fairf. 191; *Hogins v. Brashears*, 8 Eng. 242.

18. The deed must give a certain description of the land conveyed, and conform to the description adopted in the anterior proceedings. The decisions heretofore cited, in reference to the degree of certainty required in describing the land in the list, advertisement, judgment, precept, and other documents, are equally applicable to the description contained in the deed. *Black. on Tax Titles*, page 379.

19. The question sometimes arises, whether a power to sell land for the non-payment of taxes, confers, by implication, the power to execute a deed to the purchaser. It is a general rule, that every grant of power necessarily carries with it all the usual, ordinary, and necessary means for the exercise of that power. And in the case of a power of sale, it would seem reasonable that this principle should apply. The sale is the substantial, and the conveyance the formal, part of the transaction. *Black. on Tax Titles*, page 387.

20. This doctrine has been applied to tax sales in Maine and Illinois. *Farrar v. Eastman*, 5 Greenl. 345; *Bruce v. Schuyler*, 4 Gilm. 273, 274.

21. The deed must follow the form prescribed by statute. *Krueger v. Knab*, 22 Wisc. 429. The effect of a tax deed properly executed, depends upon the law at the time of the sale. *Woodman v. Clapp*, 21 Wisc. 350. The private seal of the person executing is required, unless the statute otherwise provides. *Sturdevant v. Mather*, 20 Wisc. 576; *Eaton v. North*, 20 Wisc. 449. Congress cannot, without the consent of the State, impose a stamp duty upon tax-deeds. *Sayles v. Davis*, 22 Wisc. 225.

CHAPTER XXI.

OF VARIANCES BETWEEN DIFFERENT DOCUMENTS AND RECORDS RELATING TO THE PROCEEDINGS.

1. The validity of a tax title depending upon the regularity of all the proceedings, each document or record, in the series of acts necessary to the consummation of the title, must not only be legal on its face, but correspond with the preceding one upon which it is based, in all essential particulars. The proceedings are, in one sense, an entirety, and must be consistent throughout. This is requisite, not only with a view to the legal identification of the document or record, but the power of sale and conveyance in a great measure depends upon such consistency. The assessment is the incipient act in the acquisition of title, and all of the subsequent proceedings are based upon it; each act in the series must, therefore, not only conform to the assessment, but correspond with its own immediate antecedent, in every thing which is essential to its legal identity. Any material and substantial variance between the document or record in question, and those which preceded it in point of time, is fatal to its validity; while trifling errors and omissions in matters of form, which do not affect the power of the officer, nor destroy the identity of the document or record as a part of the entire proceedings, may be disregarded. This is the only true rule to adopt. *Pitkins v. Yaw*, 13 Ill. 251.

2. In *Fitch v. Casey*, 2 G. Greene, 300. The west fifth of the lot was assessed, the west two-fifths were returned as delinquent, the west third was advertised for sale, the west two-fifths sold, and the tax deed conveyed the west two-fifths. The sale was held void. Kinney, J.: These variances we think sufficient to vitiate the entire sale and defeat the collector's deed. Two-fifths of the lot were sold and a deed made, when but one-fifth was assessed

for taxes. The officer sold a part on which no tax was levied, and therefore on it no tax encumbrance existed.

3. In *Smith v. Bodfish*, 27 Me. 289, the deed recited the levy of a tax of one cent and four mills per acre on a township containing 23,414 5-8 acres, amounting to \$923.00. The record of the county commissioners showed a tax of eight cents and two mills per acre, amounting to \$1,920.00. In the absence of any explanation, the sale was held void, because of the variance in the amount of the tax.

4. When the land was listed and assessed in the name of Allan Gillespie and James Gaily, and advertised as the property of Charles Gillespie, the variance was held fatal. *Watt v. Gilmore*, 2 Yeates, 330.

5. The assessment of land for taxes, and the advertisement and sale of the land for the non-payment of the taxes must be in the same name, whether of the true owner or others or unknown owners. *Bettison v. Budd*, 21 Ark. 578.

6. Where the names of streets, &c., have been changed between the date of the assessment and the deed, and the deed, in describing the premises, uses the new names, thus varying from the assessment and other previous proceedings, the deed is, nevertheless, good. *Pursell v. Porter*, 29 La. Ann. 323.

CHAPTER XXII.

OF SALES ACTUALLY AND CONSTRUCTIVELY FRAUDULENT.

1. The maxim is, that fraud vitiates every thing. There is nothing in the nature of tax sales, which exempts them from the operation of this general maxim. Positive fraud occasionally infects these sales. Instances have occurred where the collector and purchaser have combined to defraud the owner by a sale and division of the spoil, where the taxes were in fact paid by the owner. Also, where an agent intrusted with funds to pay the taxes, violated his trust, and by a similar arrangement with the purchaser, permitted a sale. These, and positive frauds of a similar character, of course render the sale void. Though positive frauds sometimes occur, the most numerous kind are those usually denominated constructive; or that class of frauds which may be inferred from the violation of public or private confidence; from the privity of the purchaser with the title sought to be divested, or on account of their being contrary to public policy. Such sales are void, not so much because they are opposed to the letter, as to the spirit of the revenue laws, and the principles of good faith which the common law exacts in transactions of this nature. A partnership or contract formed for the purchase of land at tax sales, is against the policy of the law; and if such contract be entered into for the express purpose of making such purchasers, it is a fraud on the owner of the property, and the purchaser acquires no title. *Dudley et. al. v. Little et. al.* 2 Ham. 504.

2. Any agreement or understanding between two or more bidders at such sales, that one of them only shall bid upon a particular tract of land, if carried into execution, is void, whether the

parties to the combination are to share the profits or not; because its direct effect is to diminish competition.

But there is no reason or law to prevent an individual who holds a defective title from purchasing a better one at a tax sale; and if he stands in no relation of trust to the owner, and is not implicated in any fraud against him, his measures to perfect his title by a purchase at a tax sale will not enure to the benefit of the owner. *Coxe v. Gibson*, 3 Casey (Penn.) 160.

3. It is a well-settled principle, that all agreements whereby parties engaged not to bid against each other at judicial or statutory sales are void. So, if underbidders or puffers are employed at the sale, to enhance the price and deceive other bidders, and they are, in fact, misled, the sale will be held void as against public policy. 1 Story's Eq. sec. 293.

4. There is still another class of frauds proper to be noticed, such as purchases made by those who are bound by covenant, or upon legal or equitable principles, to pay the taxes, and yet suffer the land to go to sale for the purpose of acquiring a title against the owner, under whom they claim the possession, or to whose title they are in some manner privy. *Blake v. Howe*, 1 Aikens 306; *Willard v. Strong*, 14 Vt. 532; *Coppinger v. Rice*, 33 Cal. 408.

5. A mortgagor in possession, who has conveyed with warranty, is bound to pay the taxes, and prevent a sale of the estate; and if he acquires a tax title, it enures to the benefit of the mortgagee. *Fuller v. Hodgdon*, 25 Me. 243; *Gardiner v. Gerrish*, 23 Me. 46; *Frye v. Bank of Illinois*, 11 Ill. 367; *Coombs v. Warren*, 34 Me. 89; *Williams v. Hilton*, 35 Me. 547. Nor can the mortgagee acquire any title at a tax sale whereby the mortgagor may become barred of his equity of redemption, whether he is in or out of possession. The person in whose name the land was listed and assessed for taxation, can acquire no additional title by purchasing it at the sale. *Douglass v. Dangerfield*, 10 Ohio, 152; *Ballance v. Forsyth*, 13 How. (U. S.) 18; *Voris v. Thomas*, 12 Ill. 442; *Glancy v. Elliott*, 14 Ill. 456; *Chambers v. Wilson*, 2 Watts, 495.

6. So the purchaser at a tax sale, of land in which he has an interest as heir, acquires no additional title. *Piatt v. St. Clair's Heirs*, 6 Ohio, 93 ; *Choteau v. Jones*, 11 Ill. 322.

7. One in possession of a tract of land at the date of the assessment, may purchase at the sale, unless it appears that he was bound to pay the taxes, in which event he can acquire no title by his purchase. *Blakely v. Bestor*, 13 Ill. 708.

8. The clerk of an auction sale for taxes may purchase. *Wells v. Jackson Man'g. Co.*, 47 N. H. 235 ; a tax collector cannot purchase, directly or indirectly, at his own official sale. *Chandler v. Moulton*, 33 Vt. 245.

9. Fraudulent bidding or combinations as to certain lands at a tax sale, cannot affect the title of one who purchased other lands at such sale and was ignorant of such proceedings. *Case v. Dean*, 16 Mich., 12.

CHAPTER XXIII.

OF THE EFFECT OF THE SALE AND DEED, WHEN THE LAND SOLD WAS EXEMPT FROM, OR NOT SUBJECT TO, TAXATION:

1. If the sovereign power of taxation has never attached to the land, or having once legally attached, the land is exempted from the operation of the taxing power, then it cannot be sold. A sale under such circumstances is void to all intents and purposes. *Buckley v. Osburn*, 8 Ohio, 180 ; *Bott v. Perley*, 11 Mass. 169.

2. When the constitution itself exempts the land from taxation, it is clear that the legislature have no power to levy and collect taxes upon it. *Brewster v. Hough*, 10 N. H. 138 ; *Hardy v. Waltham*, 7 Pick. 108.

3. It is certainly a very high act of legislative power to grant an exemption from all future taxation, so as effectually tie the hands of future legislatures, under any and all future emergencies. But this has been held to be properly done ; and it is sanctioned by the highest judicial authority. *Seymour v. Hartford*, 21 Conn. 481 ; 6 Conn. 223 ; 7 Conn. 335.

4. The power of taxation is essentially a power of sovereignty of eminent domain, and it may well deserve consideration, whether the power is not inherent in the people, under a republican form of government, and so far inalienable, that no legislature can make a contract by which it shall be surrendered, without express authority for that purpose in the constitution or in some other way directly from the people themselves. *Brewster v. Hough*, 10 N. H. 138.

5. The constitution of Maine provided that lands which belonged to the commonwealth of Massachusetts "shall be free from

taxation, while the title to said lands remains in the commonwealth." In one case it appeared that Massachusetts had contracted to sell the land, but the vendee had not fully complied with the conditions of the contract, though the contract was in full force. This property was taxed and sold, as the property of the vendee, and it was held that the land was exempt, and the sale void. *Emerson v. County of Washington*, 9 Greenl. 88 ; *Buckley v. Osborn*, 8 Ohio, 180.

6. Lands belonging to the State, or other taxing power, of course are not taxable, and a sale of them is, therefore, illegal. *Buckley v. Osborn*, 8 Ohio, 180 ; *Stewart v. Shoenfelt*, 13 Serg. & Rawle, 230.

CHAPTER XXIV.

OF THE EFFECT OF THE SALE AND DEED, WHEN THE TAXES HAVE BEEN PAID BEFORE THE SALE.

1. The delinquency of the owner is the essential fact upon which the power of sale rests. The authority of the government extends only to those cases where the owner neglects to pay the tax in arrear voluntarily. When this neglect is shown, the coercive remedies of the law may be resorted to, and not before. The right to sell is therefore founded on the fact of the non-payment of the tax. If the tax be paid before the sale, the lien of the State is discharged, and the right to sell no longer exists. When the owner has performed all of his duties to the government, no court would sanction, under any circumstances, the forfeiture of his rights of property. The law was intended to operate upon the unwilling and the negligent citizen alone. Legislative power extends no further. Black. on Tax Titles, page 409.

2. Therefore, every purchaser takes a deed subject to the condition that the taxes have not been paid. The validity of the sale and conveyance necessarily depending upon the fact of delinquency, when this is drawn in question, it is competent to prove payment; and in permitting the owner to make this proof, no rule of law is violated; it is not permitting parol evidence to impugn or destroy a written contract, but it is consistent with the deed. *Curry v. Hinman*, 11 Ill. 420; *Jackson v. Morse*, 18 Johns. 441; *Rowland v. Doty*, 1 Harring. 3, 11.

3. The payment of the tax, being matter *in pais*, may be proved by oral evidence; the collector or other officer to whom the payment was made, the agent of the owner, or any person present at the time of the payment, are competent witnesses to prove the fact. *Dennett v. Crocker*, 8 Greenl., 239.

4. By the Vermont statute, payment must be in money only, and a payment by a town order is no discharge of the tax. *Sawyer v. Springfield*, 40 Vt. 305.

CHAPTER XXV.

OF THE EFFECT OF THE SALE AND DEED WHEN A REDEMPTION FROM THE SALE HAS BEEN MADE.

1. The purchaser's title is a conditional one. The sale may have been made, and all of the previous proceedings conducted in strict conformity with the law, and yet a redemption by the owner will defeat the contingent title of the purchaser. He acquires his right to the estate under the same law which confers the privilege of redeeming upon the owner. That law is the source of his title, and by it his rights must be determined. If no redemption is effected, the estate becomes absolute in him. *Cooper v. Brockway*, 8 Watts, 163 ; *Byington v. Rider*, 9 Iowa, 566 ; *Blight v. Banks*, 6 Mon. 206 ; *Taylor v. Steele*, 1 A. K. Marsh. 316.

2. The question—who may redeem?—is probably more important than any other connected with this subject. The terms of the statutes are, that “the owner,” “the party in interest,” or “any person,” may redeem. Ordinarily, ownership means the right by which a thing belongs to some one in particular, to the exclusion of all other persons. The owner is he who has dominion of a thing, which he has a right to enjoy and do with as he pleases. It is the highest grade of title. In construing the redemption laws, the courts hold that the word owner is a generic term, which embraces the different species of interest which may be carved out of a fee-simple estate. This construction is the only one which can effectuate the intention of the legislature, and protect the interests of all parties concerned in the land sold for the non-payment of taxes. *Black. on Tax Titles*, pages 418, 419, 420, 421. *Jarrott v. Vaughn*, 2 Gilm. 132 ; *Illinois Mutual Fire Insurance Co. v. the Marseilles Manufacturing Co.*, 1 Gilm. 236.

3. It may therefore be laid down as a general rule, that any right, whether in law or equity, whether perfect or inchoate, whether in possession or action, amounts to an ownership in the

land—and that a charge or lien upon it constitutes a person claiming it, an owner, so far as it is necessary to give him the right to redeem. Black. on Tax Titles, page 422.

4. A tender in Massachusetts, after advertisement, but before sale, need not include any fee for a levy upon the land, or travel to make a return to State or County treasurers, or for a commission on the tax. *Converse v. Jennings*, 13 Gray, 77. A tender must be unconditional, and for the use of the purchaser, his heirs or assigns, and where made with a collusive understanding that it shall be refused, it is not sufficient. *Woodbury v. Shackleford*, 19 Wisc. 55.

5. If the purchaser at the tax sale is indebted to the tax-payer for more than the amount of the tax, this has been thought to operate as an immediate redemption, and the deed to him would become inoperative. *Gaskins v. Blake*, 27 Miss. (5 Cushman,) 677.

6. A redemption after an invalid sale does not strengthen an owner's title. *Cuttle v. Brockway*, 32 Penn. St. R. 45.

7. That the legislature cannot forbid the making defence to a void tax title unless redemption money is paid. *Conway v. Cable*, 37 Ill. 82.

8. Where several distinct parcels have been improperly sold in gross, the purchaser cannot object to a redemption by parcels. *Penn v. Clemens*, 19 Iowa, 372.

9. A law requiring as a condition of redemption payment of thirty per cent interest on taxes paid by purchaser subsequent to sale, is not unconstitutional. *Mulligan v. Hintrager*, 18 Iowa, 171.

10. Where the owner does not pay enough, owing to the mistake of the officer to whom he makes payment, the redemption is nevertheless good. *Dietrick v. Mason*, 57 Penn. St. R. 40.

11. Under the Gen. Stats. of Mass. ch. 12, §42 and §36, not only the mortgagee but the assignee of his title, may redeem. *Faxon v. Wallace*, 98 Mass. 44.

12. A tender should not be made to a grantee of the tax purchaser by a deed made when he was disseised, but to the tax purchaser himself. *Faxon v. Wallace*, 98 Mass. 44.

CHAPTER XXVI.

OF THE EFFECT OF THE SALE AND DEED, WHERE THE OFFICER HAS ABUSED OR EXCEEDED HIS AUTHORITY.

1. It is a general principle, that if, in the execution of an authority conferred by law upon a public officer or private individual, an abuse or excess of the authority occurs, the entire proceedings under the authority are rendered void, and the person committing the act complained of as an abuse or excess, becomes a trespasser, *ab initio*. And it is immaterial whether the authority is derived from the common or statute law; or whether the abuse or excess consists of an act of commission or omission. The six Carpenters' case, 8 Co. 146; Taylor v. Cole, 3 Term, 292; Winterbourne v. Morgan, 11 East, 395; Anscomb v. Shore, 1 Campb. 285; 1 Chitty, Pl. 185, 11 Am. Ed. 1851.

2. When the officer abuses his authority by selling more land than is necessary to pay the tax, his act is void. Mason v. Fearson, 9 How. (U. S.) 248; O'Brien v. Coulter, 2 Blackf. 421.

3. In the case of public officers, whose authority is not derived from any individual, that the law is clear, that whenever they transcend their authority, the whole act is void; that the law will not for them, nor for any one else, presume they intended to act properly. Six Carpenters' case, 8 Co. 146.

4. In the case of a naked power, if it is exceeded in the act done, it is entirely void. But in that of a power coupled with an interest, it is good for so much as is within the power, and void for the rest only. 4 Cruise, Dig. Tit. 32, ch. 13, sec. 2, citing Jenk. 205. The power to sell land for the non-payment of a tax, is, as we have seen, a naked power. It may be laid down, then, as a general rule, that if a naked power be not pursued, the execution of it is void, both at law and in equity. Waldron v. McComb, 1 Hill, 111; Clarke v. Courtney, 5 Pet., 319.

CHAPTER XXVII.

OF THE COVENANTS OF THE OFFICER, CONTAINED IN THE TAX DEED.

1. It is a very unusual thing for a statute to require covenants to be inserted in a tax deed, by which the State, officer, or former owner, are to become bound in the event that the title of the grantee proves defective.

That a town is not liable to a purchaser of an invalid title at a tax sale for the consideration paid and expense of defending title, see *Lynde v. Melrose*, 10 Allen, 49. *Corbin v. Davenport*, 9 Iowa, 289. But in New Hampshire and Vermont, the form of the deed prescribed by law contains a covenant, substantially, that the officer making the conveyance had, in his capacity as such officer, good right to sell and convey the estate, and that he would warrant and defend the same against the lawful claims of all persons.

2. The intention of the legislature in requiring this particular form of deed, was to make an operative conveyance of the land where the provisions of the law had been complied with, and not to bind the officer by this involuntary covenant. *Gibson v. Mussey*, 11 Vt. 212.

3. The collector is not liable upon such covenant. He is expressly required to execute such a deed, and for the purpose of "passing the title in law."

If persons acting in *alieno jure* voluntarily enter into covenants, no principal being bound, the party making the covenant will be bound personally, as in the case of executors, administrators, and guardians. *Wilson v. Cochran*, 14 N. H. 397.

4. No objection, however, can be perceived to a recovery of the consideration money in such a case. The only argument against a recovery upon the covenant is, that it is a compulsory one.

When the officer voluntarily covenants against his own acts, and for the regularity of the anterior proceedings, there is no question of his liability to the covenantee, his heirs and assigns. Black. on Tax Titles, 443.

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CHAPTER XXVIII.

OF THE CONSENT OF THE OWNER TO IRREGULARITIES IN THE PROCEEDINGS.

1. When an irregularity—of such a character as to affect the power of the officer to sell—takes place in any part of the proceedings, and the owner of the land being aware of the fact, is silent, and takes no step to prevent the sale, but permits it to proceed, or even actually consents to waive the irregularity, a sale under such circumstances will not be recognized in a court of law. The officer derives his authority from the law, and not from the owner. He must obey the law, and not the orders of a private individual. *Scales v. Alvis*, 12 Ala. 617; *Isaacs v. Gearheart*, 12 B. Mon. 231; *Buchannon v. Upshaw*, 1 How. (U. S.) 56.

2. A tender to redeem admits the amount due, and is a waiver of any irregularity, in the assessment of sale. *Burton v. Hintrager*, 18 Iowa, 348.

CHAPTER XXIX.

OF SALES OF LAND FOR TAXES, UNDER THE CHARTERS AND ORDINANCES OF MUNICIPAL AND OTHER CORPORATIONS.

1. A municipal corporation possesses no authority to levy and collect taxes upon property situated within its corporate limits, unless under an express grant from the legislative power of the state. The power to tax is one of the highest attributes of sovereignty. Being a sovereign power, it can be exercised only by the general assembly, when delegated by the people, in the fundamental law. *Mays v. Cincinnati*, 21 Ohio, 273; *Sharp v. Speir*, 4 Hill, 76.

2. A corporation must show a grant, either in terms or by necessary implication, for all the powers which it attempts to exercise; and especially must this be done when it claims the right, by taxing or otherwise, to divest individuals of their property without their consent. A municipal corporation has no authority, except by express grant, to exempt any property within its corporate limits, from taxation. *Fitch v. Pinchard*, 4 Scam. 69; *Mack v. Jones*, 1 Foster, 393.

3. The powers of corporations in the sale and conveyance of land for taxes are only such as are expressly given by statute. *Knox v. Peterson*, 21 Wisc. 247.

CHAPTER XXX.

OF THE FORFEITURE OF LANDS TO THE STATE WHERE THE TAXES HAVE NOT BEEN PAID.

1. The omission or neglect of a duty which the party binds himself to perform, or to the performance of which he is enjoined by the law is, upon the breach or neglect thereof, called a forfeiture. Black. on Tax Titles, page 459.

2. A court of law does not favor a forfeiture, and requires strict proof of the act or omission upon which it is claimed. In many States, forfeitures for the neglect of the owner of an estate to list his land, or pay the tax assessed upon it, have been directed by the legislature. This class of forfeitures is based upon the principle that every owner holds his estate upon the implied condition that he will promptly pay his share of the common burdens assessed against the entire community. The mode of declaring the forfeiture varies according to the caprice of each state. In all cases ample provision is made for a redemption, by the owner of the estate. In order to enforce these forfeitures, the courts require the same degree of strictness which is applied to ordinary tax sales, in order to divest the title of the owner. Black. on Tax Titles, page 460.

3. When land was forfeited to the state for the non-payment of taxes due upon it, and afterwards sold and conveyed to the purchaser, and between the day of forfeiture and the day of sale, the owner paid several assessments of State taxes due upon the land, which were received by the State without objection, and appropriated; this was held to be no waiver of the forfeiture. *Hodgdon v. Wight*, 36 Me. 326.

4. Where land is claimed by forfeiture under act of 1844, the legality of proceedings may be questioned without paying or tendering tax, as c. 6, §145, of R. S. of 1857 relates to sales and not forfeitures. *Williamsburg v. Lord*, 51 Me. 599.

CHAPTER XXXI.

OF THE EFFECT OF THE REPEAL OF THE LAW UNDER WHICH THE PROCEEDINGS TOOK PLACE.

1. It is a well-established principle of law, that when a statute is repealed, it must be considered, as to all transactions *in fieri*, closed—as never having had an existence at all. The rule is subject to two exceptions: 1, where existing rights and remedies are expressly saved by the repealing clause; and, 2 where rights have become perfected and vested under the old law, the repealed statute is regarded as in full force, notwithstanding its repeal. In the former case the law is regarded as in full force, because the legislature have so declared, and its authority is amply sufficient to accomplish that intention; and in the latter instance, where a right has become vested, it is not within the scope of legislative power to divest it by a repeal of the statute under which it was acquired. The law is well settled, that when a statute is repealed it must be considered, except as to transactions passed and closed, as if it had never existed. *McQuilken v. Doe*, 8 Black. 581.

2. All inchoate rights derived under a statute are lost by its repeal, unless expressly saved. It is otherwise, however, in regard to such civil rights as have become so far perfected as to stand independent of the statute; or, in other words, such as have ceased to be executory, and have become executed and vested. The rule that vested rights acquired under a law are not affected by a repeal, is founded in good sense and reason, and is consonant to the fundamental principles of natural justice. *Butler v. Palmer*, 1 Hill, 324.

3. No vested right to property, acquired by virtue of a statute, can be divested by a repeal or modification of the law. *Fletcher v. Peck*, 6 Cranch, 87; *Benson v. Mayor of New York*, 10 Barb.

4. The constitution of the United States provides that no state shall pass any law impairing the obligation of a contract, &c. The state constitution contains the same prohibition upon the power of the legislature.

5. The obligation of a contract is that which obliges a party to perform his contract, or repair the injury done by a failure to perform; as regards the remedy, it may be modified by the legislature, but not entirely abolished, for in substituting one mode of proceeding for another, they must afford a reasonable remedy. An act that should wholly extinguish all existing remedy, so as to leave no redress and no means of enforcing a contract, would, by operating *in presenti*, impair its obligation. Black. on Tax Titles, pages 478, 479.

6. In determining the validity of a tax title the case must be governed by the law as it stood at the time of the assessment and sale.

Where a sale was made while the law extending a married woman's right of redemption beyond three years was in force, the subsequent repeal of that law did not affect the right to redeem from such sale. *Adams v. Beale*, 19 Iowa, 61; *Myers v. Copeland*, 20 Iowa, 22.

7. And conversely it seems there is a vested right on the part of a purchaser to acquire an absolute title if the land is not redeemed within the time fixed by the law existing at the time of sale. *McCulloch v. Dodge*, 6 R. I., 346.

CHAPTER XXXII.

OF THE JURISDICTION OF THE COURTS IN CAUSES INVOLVING THE VALIDITY OF TAX SALES, AND OF THE REMEDIES OF PARTIES INTERESTED THEREIN.

1. Ordinarily, the validity of a tax, and the regularity of the proceedings to enforce its collection, are questions properly cognizable in a court of law. But a court of equity undoubtedly possesses ample authority to restrain a tax sale, where injustice might result, but for this restraining power. When the officer has no power to sell, or proceeds to sell without observing the more essential requirements of the statute, under which he derives his authority, a court of equity may enjoin the sale. *Williams v. Cammack*, 27 Miss. (5 Cushman) 210.

2. The execution of the power under such circumstances, is calculated to cast a cloud upon the title of the owner, and to render it unmarketable, in the equitable sense of that term. When the owner is in possession of the land, at the time the illegal proceeding is about to take place, he has no remedy in a court of law, which would indemnify him for the threatened wrong to his title. Should a sale and conveyance take place, under the proceedings alleged to be illegal, the owner, because of his possession, could not test their legality by an action of ejectment; and, unless the purchaser at the tax sale, or those claiming under him, disturb the possession, or commit some act of trespass, to the injury of the inheritance, thereby inviting the rightful proprietor to a contest, the latter would be entirely remediless at law, and compelled to await the action of the adverse claimant. Surely, under such circumstances, a court of equity would grant relief upon the familiar principles of action in that court. *Polk v. Rose*, 25 Md. 153.

3. But when the premises are not in the actual possession of any one, it seems a recorded tax deed draws after it constructive pos-

session, and the owner may maintain ejectment against the grantee of the deed. *Parish v. Eager*, 15 Wisc. 532.

4. It is now well settled, that a court of chancery possesses jurisdiction to enjoin sales of land by sheriffs and tax collectors, when necessary to protect the parties in interest. The collector is a proper and necessary party to such a bill. *Black. on Tax Titles*, page 488.

5. If an assessment be vitiated by fraud, or the party assessed is likely to sustain an irreparable injury, equity may relieve. *Foote v. Milwaukee*, 18 Wisc. 270; *Schofield v. Watkins*, 22 Ill. 66.

So where a tax is levied without authority of law. *Ottawa v. Walker*, 21 Ill. 605; *Drake v. Phillips*, 40 Ill. 388.

6. So where an officer is about to sell illegally, after expiration of his term of office, *Fremont v. Boling*, 11 Cal. 380.

So where the tax has been paid, officers are proceeding to sell, *Commonwealth v. Supervisors*, 29 Penn. St. 121.

7. So to prevent a cloud on title by a sale on void tax or assessment, the defect being substantial, *Jenkins v. Rock*, 15 Wisc. 11; *Mitchell v. Milwaukee*, 18 Wisc. 92; *Fowler v. St. Joseph*, 37 Miss. 228; and especially where it will save multiplicity of suits, *Inland v. Rochester*, 51 Barb. 414.

8. Equity will enjoin assessment of property adjudged exempt by supreme court in order to avoid multiplicity of suits. *Morris Canal v. Jersey City*, 1 Beasley Ch. (N. J.) 264.

So where the tax has been lawfully commuted. *Supervisors of McDonough County v. Campbell*, 42 Ill. 490.

9. Equity will not relieve against taxes as not equal and uniform when they are less than they would have been if levied constitutionally. *Miltimore v. Rock*, 15 Wisc. 9; *Dean v. Gleason*, 16 Wisc. 1.

10. When the proceedings have been irregular, the taxes paid, or a redemption effected or tendered, equity will grant relief. When a tax sale comes before a court of equity, it is regarded with but little favor, the inadequacy of consideration being so gross, that a title thus derived is sustained in such a forum, only when

the law has been rigidly complied with in its every requisition. In the language of Judge Pope, a tax title is one of strict right, where a court would not grant a new trial, or a chancellor enforce such an unequal bargain. *Mayhew v. Davis*, 4 McL. 213.

11. A court of equity would not interfere to relieve a purchaser at a tax sale, as between him and the owner of the land, except when required to do it in consequence of positive law. *Douglass v. Dangerfield*, 10 Ohio, 152.

12. When the purchaser has acquired a right at a tax sale, he may enforce it by such remedies as are usually adopted in analogous cases. Thus, if the officer refuses to execute and deliver to him a certificate of purchase, or deed of conveyance, when he has become entitled to either by a fair and regular purchase, he may by mandamus compel the execution of them, and in some instances, a bill in chancery may be regarded as appropriate. The purchaser who seeks relief under such circumstances, must aver in his bill, and prove upon the hearing, a strict compliance by the officers with all of the requirements of the law under which the proceeding took place. *Douglass v. Dangerfield*, 10 Ohio, 152.

13. The purchaser at a tax sale cannot recover the possession from the former owner or any person claiming under him in an action of forcible detainer. Ejectment is his only remedy. *Kelly v. Hunter*, 12 Ohio, 216.

Courts of equity cannot dispense with the regulations prescribed by a statute, at least where they constitute the apparent object and policy of the law. It may be laid down as a general rule, subject to no exceptions, that in regard to powers, which are in their own nature statutable, equity must follow the law, however meritorious the consideration. *Black. on Tax Titles*, pages 493, 494.

14. The principle that equity must follow the law, and cannot supply any defect which would render a sale and conveyance void at law, for non-conformity with the statute is peculiarly applicable to tax sales and conveyances, because of the fact that they are regarded as titles *stricti juris*, derived under a naked statute authority. No instance is known of an attempt to make a tax title good by an appeal to a court of equity. *Black. on Tax Titles*, page 499.

CHAPTER XXXIII.

OF THE MODE OF PLEADING A TAX TITLE.

1. The rules which govern the mode of pleading a title derived under a tax sale, will, of course, depend upon the form of action, the character of the defence, or nature of the controversy in which the question arises. In real actions, and actions of ejectment, brought by the party who claims the land under such a title, and in trespass *quare clausum fregit*, and actions upon the case in tort, instituted by him for an injury to the possession or inheritance, the general allegation of title will be sufficient, as in ordinary cases. In trespass, and cases prosecuted against him by the former owner, his title may be given in evidence under the general issue. But when he seeks, by mandamus, or bill of chancery, to coerce the execution of a tax deed, by the officer to whom the law has intrusted the power of making it; when he relies upon his title as a defence to an action at law, or suit in chancery, the title must be specially alleged in the pleading of the party. Pleading is defined to be, "the statement of the facts which constitute a cause of action or ground of defence." Where a tax title is relied upon, each independent act of the officers who have anything to do with the proceedings, from the listing of the land for taxation, until the title is consummated by the execution and delivery of a deed, constitutes an essential link in the chain of title, and must be specially averred in the pleading. The rule requires that all of the facts upon which the legal sufficiency of the cause of action or ground of defence depends, shall be stated. The exceptions to this rule are, that facts of which the court will *ex officio* take notice, facts which the law presumes, and facts which come more properly from the opposite party, as being peculiarly within his knowledge, need not be stated in his pleading. Black. on Tax Titles, pages 500, 501.

2. There is another rule of proceeding which requires, "that

facts only are to be stated, and not arguments or inferences, or matter of law." An averment that the proceedings of the officer were "regular," "legal," &c., is a mere legal conclusion, without giving the facts from which that conclusion is drawn. In pleading a deed, it is unnecessary to allege that it was in writing, sealed and delivered; the term, deed, *ex vi termini*, means a writing, sealed and delivered, therefore, if the pleader alleges that "the défendant, on, &c., at, &c., made his certain deed of that date, &c.," the law implies that it was in writing, sealed and delivered. If a tax deed was, by law, conclusive, or even *prima facie* evidence that the law had been complied with, then it would be sufficient to aver generally the existence of a "tax deed in due form of law," for the law would imply that every preliminary fact existed which was necessary to its validity. But it has been shown that a tax deed is not, according to the principles of common law, evidence that the preliminaries have been complied with that no intendments are indulged in for the purpose of upholding the tax sale, that the law must be strictly complied with in all of its requirements, and that the onus lies upon the party claiming under such sale to show a compliance. Where a party claims a right unknown to the common law, but which depends entirely upon a statute for its support, he must, in pleading his title, set forth all of the facts which the statute has made essential to its validity. Where the validity of a title depends upon the existence of any fact *in pais*, the fact must be specially alleged. All of the acts *in pais* essential to the validity of a tax title, should be specially alleged when such a title is relied on in pleading. Tax title depends upon matters *in pais*. In pleading a tax title, it should be alleged, with reasonable certainty, that the land was subject to taxation; that it had been listed, valued, and charged with the tax, in the time and manner required by law; that the tax had been duly levied by competent authority; that the tax list or warrant to collect had been duly delivered to the collector; that the collector had resorted to all of the collateral remedies which the law had conferred upon him, in order to enforce the payment of the tax without resorting to a sale of the land, such as a demand of the

tax, and a seizure of the body or goods of the delinquent ; that the delinquent list had been duly returned to the proper officer or court by the collector ; that the tax remained due and unpaid ; that personal notice had been given to the delinquent, where the law requires it ; that a judgment had been rendered by a court of competent jurisdiction, against the land, where the law requires a judgment ; that a valid precept had issued upon such judgment, and was duly delivered to the officer appointed by law to make sale of the land ; that the time and place of sale was advertised in the time and manner required by law ; that the sale took place at the time and place, and was made by the person and in the manner required by law ; that the pleader was the purchaser, or some person under whom he claims by assignment ; that a certificate of purchase was duly executed and delivered by the officer to the purchaser, and was duly recorded, &c., where such recording is requisite ; that due notice to redeem had been given the owner ; that the officers charged with the duty have duly returned the proceedings to the proper office, and that they were filed or recorded as required by law ; that the time limited for redemption had expired ; and that the officer had executed and delivered to the purchaser a deed in due form, &c., which deed had been duly recorded, &c. Such strictness is not only in conformity with the principles of pleadings and the precedents in analagous cases, but is supported by express authority. *Blackeney v. Ferguson*, 3 Eng. 277 ; *Stead's Executors v. Course*, 4 Cranch, 403 ; *Furness v. Williams*, 11 Ill. 229 ; *Alger v. Curry*, 40 Vt. 437 ; *Byington v. Robertson*, 17 Iowa, 562.

CHAPTER XXXIV.

OF THE RULES OF EVIDENCE RELATIVE TO MAINTENANCE AND OVERTHROW OF A TAX TITLE.

1. When a statute, under which the title originated, or which is in force at the time of the trial, is silent as to the mode of proving or disproving any fact involved in the contest, the common-law rules of evidence must control the admissibility and effect of the testimony. In *Lamb v. Gillet*, 6 McL. 365, it is said, that parol evidence is admissible to prove the prior proceedings, except as to such facts as the statute requires to be of record.

2. It is a familiar rule, that the best attainable evidence shall be adduced by the party upon whom the onus probandi rests, to prove every disputed fact. The ground of this rule is a suspicion of fraud. If it appears, from the very nature of the transaction, that there is better evidence of the fact, which is within the power of the party, and is yet withheld from the court and jury, a reasonable presumption arises, that the failure to produce it is founded upon the knowledge of the party, that its introduction would defeat or weaken his claim of right. The rule is, therefore, essential to the pure administration of justice. In requiring the production of the best evidence applicable to each particular fact, it is meant, that no evidence shall be received which is merely substitutionary in its nature, as long as the primary evidence can be had. The rule excludes only that evidence which, upon its face, or from the very nature of the fact sought to be proven, indicates the existence of more original and reliable sources of information. Because the better evidence affords the greatest certainty of the fact in question, and removes all suspicion of sinister motives in the mind of the party, it must be resorted to in all cases. *Starkie Ev.* part 3, sec. 10 ; 1 *Greenlf. Ev.* ch. 4, sec. 82.

3. And so tenacious are the courts in the strict application of this rule, that even when it clearly appears that the better evidence is unattainable, because of its loss or destruction, the next best evidence must be resorted to, thus recognizing the principle, that there are degrees in the various kinds of secondary evidence. *Greenlf. Ev. sec. 84*, note; *Mariner v. Saunders*, 5 *Gilm.* 121, 124. The application of this rule to the proof of a tax title is unquestionable. In some instances the statute law expressly requires that all of the proceedings shall be reduced to writing, and each document connected with them filed or recorded in some public office, for the benefit of all parties concerned; and makes the original, or certified or sworn copies thereof, admissible in evidence. But independent of this, the very nature of the proceeding implies the necessity of perpetuating the evidence of every part of it in writing, and forbids a resort to the memory of man for proof of any material fact connected with it. A tax collector cannot defeat a tax title by impeaching the truth of his own official return as to conduct of sale. *Bisor v. Coulter*, 18 *Ark.* 423.

4. The list, valuation, levy of the tax, the authority to collect, the return of delinquents, the advertisement, registry, and certificate of sale, deed, &c., all necessarily imply that they are to be in writing, and authenticated by the proper officer. It would be utterly impossible to conduct the proceedings in any other manner. The universal usage has been to reduce the proceedings to writing, and the authorities, either expressly or by implication, acknowledge the necessity of it. *Job v. Tebbetts*, 5 *Gilm.* 380; *Bruen v. Graves*, 11 *Ill.* 442. If this position be true, it follows inevitably that the best evidence to prove any disputed fact involved in the investigation of a tax title, is the original document, or a certified or examined copy thereof.

5. The most usual mode of proof is by means of an office copy—i. e. by a copy made out by the officer having the legal custody of the original, and certified under his hand and seal of office. *Parker v. Smith*, 4 *Blackf.* 70; *Coman v. State*, 4 *Blackf.* 241.

6. But an examined or sworn copy, made by a person who saw

and copied from the original, is also admissible upon general principles. *Graves v. Bruen*, 1 Gilm. 167; *Job v. Tebbetts*, 5 Gilm. 376; 11 Ill. 453; *Schuyler v. Hull*, 11 Ill. 462; *Sheldon v. Coates*, 10 Ohio, 278.

7. In no case can a private or unofficial copy, in the hands of the officer who made it, or to whom it was delivered, be received in evidence in lieu of the original, if the latter is in existence. *McCall v. Lorimer*, 4 Watts, 351.

8. When the original is lost or destroyed, and no certified or examined copy is in existence, parol evidence of its contents may be resorted to. *Wells v. Jordan Mang. Co.*, 47 N. H. 236.

9. But such evidence ought not to be permitted when there is any suspicion of a fraudulent destruction or suppression of the original. It is extremely dangerous in any case, and the necessity of resorting to it but seldom occurs. *The Proprietors of Cardigan v. Paige*, 6 N. H. 182.

10. When the original or a copy is offered, and it appears upon the face of either that the proceeding was irregular in any respect, parol evidence is inadmissible for the purpose of supplying the defect, or in any manner to aid by explanation. *Lessee of Massie's Heirs v. Long*, 2 Hamm. 287.

11. And when the law requires the proceeding to be recorded, the title of the purchaser must stand or fall by the record itself; oral evidence being inadmissible where the officer omitted to record the original, or recorded them defectively. *Minor v. McL.* 4 McL. 138; *Coit v. Wells*, 2 Vt. 318; *Kellogg v. McLaughlin*, 8 Ohio, 114.

12. In all cases where office books and files are relied upon to prove a particular fact, their admissibility depends upon the following facts: 1. That the person who made it had official authority to do so. 2. That the book or document comes from the proper depository; and 3. Proof of the identity of the book or document. *Dikeman v. Parrish*, 6 Parr, 210.

13. It is the duty of the officer to make a transcript of the entire proceedings, so that the court can determine, upon inspection, whether the law has been complied with or not. The officer

has no power to decide upon the legality of the proceeding, nor certify to his legal conclusions. Thus, the recital of "due notice" in the record of a special and summary proceeding, was held insufficient to prove notice to the party in interest; the record ought to have set out the notice at length, that the court might judge of its legality. *Rex v. Croke*, 1 Coup 26; *Gilbert v. Columbia Turnpike Co.*, 3 Johns. Ca. 107.

14. So where a stranger certified and swore that he posted the notice of a tax sale "eight weeks," without stating when he first posted it, the court held it insufficient, saying, "we cannot know how he computes time in such a case. The affidavit shall state the day when the advertisement was put up, and then we can see whether it was put up in due season." *Nelson v. Pierce*, 6 N. H. 194; *Dunn v. Games*, 1 McL. 319; *Games v. Stiles*, 14 Pet. 322.

15. A general statement, that the collector had given the plaintiff legal notice, is insufficient to show that he had given him the six days notice required by law. *Dunn v. Games*, 1 McL. 319.

16. A general allegation by a collector, that he had proceeded according to law, would be insufficient when any statement of his proceedings was necessary. It seems, indeed, to be well settled, that public ministerial officers must set forth the acts done by them, that the court, and not themselves, may judge of their sufficiency. *Henry v. Tilson*, 19 Vt. 447; *Briggs v. Whipple*, 7 Vt. 18.

17. Whenever parol evidence of any fact connected with the proceedings is admissible, the officer who conducted them is a competent witness to prove the fact. *Lancaster v. Pope*, 1 Mass. 86; *Davis v. Maynard*, 9 Mass. 242; *Wellington v. Gale*, 13 Mass. 483; *Perry v. Dover*, 12 Pick. 206; *Coit v. Wells*, 2 Vt. 318; *Carpenter v. Sawyer*, 17 Vt. 121.

18. Where the statute requires proof of the advertisement, by the affidavit of the printer, no other evidence is admissible. *Luffborough v. Parker*, 16 S. & R. 351.

19. In the absence of any statutory provision, the notice may

be proven by the introduction of the newspaper in which it was inserted, accompanied by proof that it was published the requisite number of times. *Thevenin v. Slocum*, 16 Ohio, 519.

20. As a general rule, no presumption can be raised in behalf of the officers, to cover any radical defect in their proceedings. *Executors v. Couise*, 4 Cranch, 403.

21. Courts will not presume any essential fact, but, to a certain extent, presumptions may and must be made, otherwise, we are driven to forced and violent presumptions the other way, which are not to be made. *Spear v. Ditty*, 8 Vt. 419.

22. If listers state in their certificate that they took the oath required of them, it seems, the presumption is that they did so. *Blodgett v. Holbrook*, 39 Vt. 336.

23. It seems that in the absence of evidence it will be presumed that the assessors took the oath required by statute in New Jersey. *State v. Metz*, 2 Vroom, (N. J.), 378.

24. But a party who lies for a number of years, without asserting his claim of right under a tax deed, cannot ask the court to sustain his title by presumptions. *Richardson v. Dorr*, 5 Vt. 9; *Townsend v. Downer* 32 Vt. 183.

25. No presumption can be indulged in to sustain a tax title, where the evidence clearly shows upon its face that the proceedings were irregular. *Hole v. Rittenhouse*, 6 Harris (Penn.) 305; *Porter v. Whitney*, 1 Greenl. 306.

26. No power will be presumed, where the evidence of its existence is of record. *Tolman v. Emerson*, 4 Pick. 160.

27. Where one claims under a deed or other instrument used in the conveyance of real estate, which appears on the face of it to have been executed by virtue of a power from the grantor, the power or an authenticated copy of it, should be produced in evidence, to support the deed, in order that it may be seen whether there was authority for the act, to the extent to which it is performed. But the same principles by which deeds may be admitted in evidence, without proof of their execution, may be applied to the powers under which they purport to be executed. The deed is *prima facie* evidence of title, if possession of the

premises, purported to be granted, has been taken and continued under the deed. *Pejepscut Proprietors v. Ransom*, 14 Mass. 145; *Colman et al v. Anderson*, 10 Mass. 105.

28. Under a tax title the original purchaser, is bound to collect and preserve the evidence upon which the validity of his title depends; and if he has failed to do so, it is his own folly. The records, documents, and facts which can be collected by the party, after diligent and faithful search, tending to establish the regularity of the proceedings, shall be submitted to a jury, and they directed to presume only such facts as may be fairly and rationally presumed from the facts and circumstances proved. This excludes every presumption which is contradicted by the facts given in evidence before the jury. Thus, suppose the list and valuation produced, and the land in controversy no where appears upon the list; the jury shall not be permitted to presume a listing of the land for taxation. Again, suppose it appears that the list, upon its face, is illegal and void, that it was made by a person not authorized by law to make it, or the valuation of the land is omitted; in all these instances, the presumption is forbidden by the facts proven. Suppose, again, that the newspaper in which the notice was published, is found upon the files of the proper office, and produced in evidence before the jury, and upon its face the notice appears to have been inserted in a newspaper not authorized by law to publish the delinquent list, or, though having due authority, the land in controversy is not embraced in the list; in these and other like cases, the presumption will be unavailing. *Read v. Goodyear*, Greenl. Ev. sec. 20, and cases there cited.

29. It is presumed that a tax title, whether good or bad, is a substantial foundation for an adverse possession, under every statute of limitation which simply bars the action and entry of the owner. There a claim of title makes the possession adverse, and no presumptions need be called in to the aid of the possessor. *Freeman v. Thayer*, sec. 33 Me. 76.

30. It has been determined, that, after a lapse of thirty years from a collector's sale of land for taxes, it may be presumed, from facts and circumstances proved, that the tax bills, valuation,

warrants, notices, &c., were regular; that the assessors and collectors were duly chosen at legal meetings; that the collector was sworn; that a valuation and copy of the instruments were returned by the assessors to the town clerk, and that every thing which can be reasonably and fairly presumed, may have the force and effect of proof. *Farrar v. Eastman*, 5 Greenl. 345; *Freeman v. Thayer*, sec. 33 Me. 76.

31. A proprietary tax sale was sustained, where it took place forty years prior to the trial, and there had been a possession for that length of time under the tax deed. *Farrar v. Eastman*, 5 Greenl. 345.

32. It is not essential, that all the facts necessary to sustain and justify the sale, should be recited in the deed. They may be presumed or proved *aliunde*. Such as do not appear in the records, and among the papers of the proprietors, may, and after such a length of time, will be presumed.

33. Acts done which presuppose the existence of other acts to make them legally operative, are presumptive proofs of the latter. *Bank of the U. S. v. Dandridge*, 12 Wheat. 70.

34. Where the doctrine of presumption is relied upon, the possession of the party claiming under the tax deed must be a long, open, notorious, and exclusive possession—such an one as will constitute, technically, an adverse possession. *Waldron v. Tuttle*, 3 N. H. 340.

35. In no case can a jury be permitted to presume, from the mere production of a collector's deed, and from proof of possession under it, that the sale was legal. Very few of those sales have been found to be legal. The presumption is, in fact, against their validity. He who rests his claim to land, upon the legality of such a title, must show, affirmatively, that the law of the land has been substantially pursued in the sale. And in no case can he be permitted to rely upon possession as evidence, even of particular facts, until he has shown that the common and ordinary evidence of such facts has been probably lost by time and accident, and is not to be found. In all cases, enough of the proceedings should be shown to render it not improbable that the proceedings

may have been regular; and then long and quiet possession may be left to a jury, as evidence of particular facts, the ordinary proof of which cannot be found. *Pittsfield v. Barnstead*, 40 N. H. 477.

36. Upon a critical review of all the decisions relative to presumptions, in this class of titles, the principles fairly deducible from them are, 1. That, ordinarily, no presumptions are indulged in for the purpose of sustaining the tax title, when the missing fact is essential in its character. 2. That presumption, as to non-essentials, must be allowed to a certain extent, or the courts are driven to forced and violent presumptions the other way. 3. That where there has been a possession of twenty years, or for a less time, under a statute which merely bars the entry and action of the owner, the possession based upon a tax deed is sufficient to establish a claim of title, without resorting to the doctrine of presumptive evidence. 4. That a long possession under a tax deed, short of the period fixed by the statute of limitations, is a sufficient basis for a presumption of regularity. 5. That one out of possession, but claiming under a tax title, has no right to the benefit of any presumption in his behalf. 6. That no presumption can be sustained, which is contradicted by the record and documents connected with the proceedings, and, 7. A presumption, in such cases, is never admissible, when the record or files, which evidence the existence of the proceedings, can be produced. *Worthing v. Webster*, 45 Me. 270.

CHAPTER XXXV.

OF THE TITLE WHICH PASSES TO THE PURCHASER AT A TAX SALE.

1. It was held, under the statutes of Massachusetts, that if land was rightly taxed to a mortgagor who was in possession, a lien was thereby created on the entire estate, and a sale thereof in due form, would also pass the rights of the prior mortgagee therein. *Parker v. Baxter*, 2 Gray (Massachusetts), 185.

2. In New York it has been determined, that a sale, by order of court, in an action to which all persons having vested estates at law or in equity are made parties, or are proceeded against by the publication of notice, as owners unknown, cuts off all estates, contingent and unvested, as well as others, including all possible interests which might, under contingent limitations, vest in persons not yet in being, and transfers to the purchaser a fee-simple absolute. *Jackson v. Babcock*, 16 N. Y. (2 Smith) 246.

3. The land itself is sold, and not a particular interest in it. *Atkins v. Hinman*, 2 Gilm. 449; *Clarke v. Strickland*, 2 Curtis, C. C. 439.

If the land was subject to taxation, and the proceedings under the revenue law have been regular, and the owner has failed to redeem within the time limited by the law, then the whole legal and equitable estate is vested in the purchaser. A new and perfect title is established. This results from the paramount authority of the state to levy taxes on property within its limits, and coerce the payment by subjecting the property to sale. See *Dunlap v. Gallatin Co.*, 15 Ill. 7, that all prior liens and encumbrances are devested. See also *Jarvis v. Peck*, 19 Wisc. 74; *Cram v. Cotting*, 22 Iowa, 411.

4. In Arkansas, the statutes authorize the sale of the land

itself, and not merely the particular interest or title of the person to whom the tax is assessed. *Biscoe v. Coulter*, 18 Ark. 423.

5. In Mississippi, it has been held under the statute of 1846, that a sale conveys only the title of the party assessed. *Dunn v. Winston*, 31 Miss. (2 George) 135.

In Ohio, a valid sale and conveyance of a husband's land for taxes, bars the wife's right of dower. A tax title, from its very nature, has nothing to do with the previous chain of title; does not in any way connect itself with it. It is a breaking up of all previous titles. The party holding such title, in proving it, goes no further than his tax deed; the former title can be of no service to him, nor can it prejudice him. A tax sale operated on the property, not the title. If the land be regularly sold for taxes, the property, accompanied with a legal title, goes to the purchaser, no matter how many estates, legal or equitable, may be connected with it. *Joes v. Devore*, 8 Ohio St. 430; *Stuart v. Parish*, 15 Ohio, 367; *Ross v. Barland*, 1 Pet. 664.

6. The Pennsylvania statute of April 3, 1804, provides, "that sales of unseated lands for taxes, &c., shall be in law and equity valid and effectual, to all intents and purposes, to vest in the purchaser or purchasers, of lands so sold, all the estate and interest therein, that the real owner or owners had at the time of such sale, although the land may not have been taxed or sold in the name of the real owner." The construction put upon this statute is, that all prior ownerships are merged in, and divested by the tax sale—a new and independent title created—the land, and not the owner, is regarded as the debtor for the public charge imposed by the revenue laws, thus making a clear distinction between execution and tax sales. The due and regular sale and deed of land for taxes for any one year, divests the land from the lien for taxes of any previous year. At least, this is the rule as to unseated land in Pennsylvania. *Irwin v. Irego*, 10 Harris (Penn.), 368.

7. It will be seen, on an examination of the foregoing cases, that no general principle can be deduced from them in regard to the nature of the interest acquired by the purchaser at a tax sale.

None of them are entitled to the force of authoritative decisions. Some arose under statutes defining the effect of the sale, others contain a simple expression of the opinion of the Judge who delivered the judgment of the court, and others are based upon implications arising out of the general phraseology of the statute. In those states where the tax is a charge upon the land alone, where no resort, in any event, is contemplated against the owner or his personal estate, and where the proceedings are strictly in *rem*, the tax deed will undoubtedly have the effect to destroy all prior interests in the estate, whether vested or contingent, executed or executory, and those in possession, reversion, and remainder. In such case, the tax law itself is notice to the whole world of the liability of the land for all public assessments—and every one claiming an interest in the land, is bound at his peril, to pay the tax, and thus protect that interest from forfeiture or sale. If he neglects his duty in this respect, his title becomes extinct, and a new and independent title becomes vested in the purchaser, freed from all prior liens, encumbrances upon the former estate, and indeed of every interest carved out of the old fee. The fee of the land passes, and not the interest simply of the former owners. All that can be required of the purchaser in such cases, is to show title out of the state, prove the regularity of the proceedings, and introduce his deed, and he makes out a complete and perfect title to the fee. *Bigler v. Kams*, 4 W. & S. 137, Penn.

8. On the other hand, where the law requires the land to be listed in the name of the owner of the fee, or of any other interest in the estate—provides for a personal demand of the tax—and in case of default authorizes the seizure of the body or goods of the delinquent, in satisfaction of the tax—and in terms, or upon a fair construction of the law, permits a sale of the land only, when all other remedies have been exhausted—then, the sale and conveyance by the officer, passes only the interest of him in whose name it was listed—upon whom the demand was made—who had notice of the proceedings, and who alone can be regarded as legally delinquent. In such cases the title is a derivative one, and the tax purchaser can recover, in ejectment, only such interest as he

may prove to have been vested in the defaulter at the time of the assessment. Any other construction of laws, containing such provisions, would be in violation of the spirit which moved the legislature to enact them, and be the means of depriving innocent persons of their estates—persons who had no notice of the proceedings—and who, in consequence of this omission, can in no sense be regarded as delinquent. There are no express adjudications upon this point, but such seems to be fairly implied from the course of decisions relative to the manner of listing lands, and the effect of the sale where the listing has been in the wrong name. That the law in all such cases deems a notice—actual or constructive—to the owner of an interest in the land offered for sale, a prerequisite—is manifest from the circumstance, that a publication, or personal demand of a tax, is invariably required. It has since been held, that a deed purporting to convey all the right, title, and interest of a particular person named, or of any other person claiming the same under the first named person, conveys only the title of the person, first named, and no other. *Yenda v. Wheeler*, 9 Texas, 408; *Wheeler v. Yenda*, 11 Texas, 562.

9. By the common law, and English statutes in aid of it, dower could only be debarred by a divorce a *vinculo*, by eloping with an adulterer, by the attainder of her husband for treason, by detaining the title deeds from the heir, by jointure in satisfaction, by levying a fine or suffering a common recovery. This doctrine has been recognized in this country, the court holding that her own voluntary assent or misconduct was necessary to bar her right of dower, and that no laches of the husband could have any such effect. A contrary rule would be manifestly unjust. *Sink v. Smith*, 1 Gilman, 503; *Hale v. James*, 6 Johns. Ch. 258; *Danham v. Osborn*, 1 Paige, 635; *Tabele v. Tabele*, 1 Johns. Ch. 45; *Smiley v. Wright*, 2 Hamm. 506; 4 Kent, Com. 50; 2 Bl. Com. 138; 1 Thomas, Coke, 475.

CHAPTER XXXVI.

OF THE PRINCIPLE OF STARE DÉCISIS CONCERNING TAX TITLES.

1. The law and opinion of a judge are not synonymous terms—the latter may mistake or pervert the law of the land. Precedents ought not to be followed blindly, nor, on the contrary, treated irreverently. It is important that the decisions of our courts should be as stable and uniform as the statute law itself—indeed, more so—a decision which overturns a prior one has a retroactive effect—its tendency is to disturb vested rights—whereas the promulgation of a new rule by the legislature operates prospectively only. The rule is that precedents must be followed, unless flatly absurd or unjust. If a case varies from the facts and circumstances of preceding authorities, the courts are at liberty to found a new decision on those circumstances,—in other words, to make a precedent. The discretion of judges in the application of the maxim *stare decisis*, is not an arbitrary one. “Discretion,” said Lord Mansfield, “when applied to a court of law, means sound discretion, guided by law. It must be governed by rule, not by humor. It must not be arbitrary, vague, and fanciful, but legal and regular.” This is the principle by which the courts are controlled in reference to precedents. A single decision upon a question is never regarded as settling a rule, unless rights have become vested under it, and it has been acquiesced in for a length of time. And in mere matters of practice, where propriety and utility are regarded more than the certainty of the rule, and where no one is injured by a re-examination of the question, courts do not hesitate to overrule a former decision, or even a series of decisions, when it clearly appears that they were erroneous or unjust. When titles to real property are to be affected by

erroneous precedents they are usually sustained, however absurd. The rule is founded in policy. It is considered better to adhere to a bad rule, than overthrow the estates of many proprietors which have been acquired upon the faith of the erroneous precedent. Lord Mansfield, 4 Bur. 2539; Frink v. Darst, 14 Ill. 310—312, and cases there cited; 4 Bur. 2580; Broom's Legal Maxims, 112.

2. Such is the general doctrine of the courts in relation to former decisions in regard to tax titles. The Supreme Court of Vermont had decided, that the neglect of the collector to lodge a copy of his proceedings in the town clerk's office, within the time required by the statute, rendered the sale void. The question was again before the court, many years afterwards, in Taylor v. French, 19 Vt. 49, and the court was asked to overrule Mead v. Mallet, to which the following reply was made: "On the faith of this construction numerous estates in land have been bought and sold, and it would be productive of great injustice to disturb it. This construction having become a rule of property, it should not be changed without an imperious necessity, whatever we might think of it, were it *res integra*." Bellows v. Parsons, 13 N. H. 256.

3. When a principle of law has been established by a long course of judicial decisions, it should not be changed for light and trivial reasons. It does not so much matter what the law is, as that it should be well understood. A change of the law by the legislature can do but little harm, as their acts are only prospective in their operations; but a change of decisions by this court, interferes with previously acquired rights. Our decisions in this respect, have a retrospective operation. Hannel v. Smith, 15 Ohio, 134.

4. "There can be no class of laws more strictly local in their character, and which more directly concern real property, than these. They not only constitute a rule of property, but their construction by the courts of the States, should be followed by the courts of the United States, with equal, if not with greater, strictness than any other class of laws." Games v. Stiles, 14 Pet. 322.

CHAPTER XXXVII.

OF TAX TITLES AS THE FOUNDATION OF AN ADVERSE POSSESSION UNDER THE STATUTES OF LIMITATION.

1. This subject must be considered in reference, 1. To general statutes of limitation, and, 2. To statutes which, in terms, embrace no other cases, but which were designed to give security to the possession of those who claim under this class of titles. It is enacted by the statute, 21 Jac. 1, ch. 16, "that no person or persons shall, at any time thereafter, make any entry into any lands, tenements, or hereditaments, but within twenty years next after his or their right or title, which should thereafter first descend or accrue to the same; and in default thereof, such persons so not entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made." The principle of this clause has been adopted by most all of the American States. Cruise, Digest, Title, 31; Prescription C. 2, sec. 14.

2. This statute contains a saving clause in favor of infants, femes covert, lunatics.

An action of ejectment is a possessory remedy, and only competent when the plaintiff may enter; therefore it is necessary for the plaintiff to show his right to enter, by proving a possession within twenty years, or account for the want of it, under some of the exceptions contained in the statute. He must show a right of possession, as well as a right of property. Such is the theory of this class of statutes. This doctrine is to be taken with this qualification, the land in question must be in the adverse possession of another. A legal title draws to it a legal seisin, or possession. A naked possession is no evidence of title, except as against strangers. Every possessor is, therefore, presumed to be in possession in subordination to the title of the rightful proprietor.

These legal principles and presumptions give rise to the doctrine of adverse possession. *Taylor v. Horde*, 1 Burrow, 60. To repel the presumption of a holding under, or in privity with, the title of the true owner, it is essentially necessary that the tenant of the freehold should show a possession under claim and color of title—under an apparent right. Indeed, an adverse possession is nothing more or less than a possession under claim and color of title. It need not be a rightful title—else the statutes of limitation are unavailing and useless. The occupant can defend upon his title—without resorting to the bar of the statute. It is therefore held, that any evidence, written or oral, which gives color to the claim of the tenant, will repel the presumption that he holds the possession under the true owner. Any thing which clearly defines the extent of the claim, which professes to pass the land, and is not obviously defective, will constitute the basis of an adverse possession. That it need not be written, is manifest from the fact, that parol gifts, disclaimers by tenants, and expulsion of a tenant in common, and an exclusive possession for twenty years afterwards, may be the foundation of an adverse possession. And when written evidence of claim is relied on, it need not purport to carry the legal title. Thus a contract for a conveyance or a deed without a seal, has been held to be sufficient. It has been said that the title must be *prima facie* good. This cannot be true, for a deed from one who has no title will answer the purpose. So of a deed which purports upon its face to have been executed under an authority, although the power is not produced or proven. All that can be demanded, is a title, which does not upon its face show that it is illegal and void, so as to charge the person in possession with notice of its defects, and thus render his claim *mala fide*. *Everett v. Smith*, Busbee, Law, 228.

3. A possession taken in good faith, under a claim of title, which, upon its face gives color or apparent right to the claim under which the entry was made and continued, renders it adverse to the owner. "The only exceptions to this rule are those cases where a tenant enters into privity with the title of the proprietor, but afterwards places himself in a hostile attitude, and claims to hold

the possession in his own right, and in exclusion and defiance of the person under whose title he entered. Such cases arise occasionally between landlord and tenant, mortgagor and mortgagee, vendor and vendee, trustee and cestui que trust, and tenants in common. Where this relation exists, any hostile holding is in bad faith, yet a positive disclaimer of the title of the person under whom the entry was made, or actual ouster by one tenant in common, which is brought home to the knowledge of the party in interest, accompanied by an actual, open, notorious, and exclusive possession for the period of twenty years, will render the possession adverse, and bar the entry of the rightful owner. In all cases, a possession, to be adverse, must be hostile in its inception, open, exclusive, and uninterrupted, for the space of twenty years. It may be laid down, as a general rule, that a possession for twenty years under a tax deed, not void upon its face, is adverse, and bars the entry of the former owner and those claiming under him, for the simple reason, that it repels the presumption that the possessor entered under the owner, and bears, upon the face of the transaction, evidence that he claims under a hostile source of title—the State, which has competent power and authority to sell and convey the title of delinquent tax-payers. If the tax deed relied upon in a given case is declared by law to be conclusive, or even *prima facie* evidence of title in the purchaser at the tax sale, then all of the authorities concede the correctness of the position assumed; the only question which can possibly arise is, in relation to possession under tax deeds, which depend upon the rules of the common law for their legality—where the *onus probandi* rests upon the purchaser to prove, step by step, a compliance with all the requisitions of law. On this point, it may be remarked, 1. That such proof would establish a paramount title, and the statutes of limitation would be an unnecessary prop to sustain the possession; 2. The statute bars the entry of the former owner in twenty years, and the only question is, whether the tax deed confers a claim upon and gives color of title to the possessor. Let this question be answered by the authorities.

4. In *Dresbach v. McArthur*, 6 & 7 Ohio, 307. And

Flanagan v. Grimmer, 10 Gratt. 491, a tax deed, which was not evidence of title, was held to be admissible in evidence for the purpose of defining the boundaries of the purchaser's claim, and thus establishing the extent of his possession. In Waldron v. Tuttle, 4 N. H. 371, in speaking of the effect of a tax deed, the court remarked: "There are cases in which a deed, thus inoperative as an instrument of conveyance, may be evidence as to the extent and character of the possession. Thus, it being a presumption of law, that he who enters under a deed, enters claiming according to his deed, and that his possession is adverse to all other titles, when a party relies upon an adverse possession against the legal title, a deed by which nothing passed, may be evidence of the extent and character of his possession." It was, however, said in Wallingford v. Fiske, 24 Me. 386, "that a tax sale and deed being void, could give no rights whatever; they were as ineffectual to give seisin as they were to convey title." Doe v. Himelick, 4 Blackf. 494.

5. And it was held in Morse v. Brown, 11 How. U. S. 414, that seven years' possession, under a tax deed void upon its face, was no bar to a recovery by the rightful proprietor. The tax deed was not, by law, made *prima facie* evidence of a compliance with the prerequisites. The deed was void upon its face when taken in connection with the law. The opinion was given by Judge Wayne, who said that, "Upon comparing this section with the former laws of Illinois, we have concluded, that the act of 1835, was not meant to give protection to a person in possession under a deed void upon the face of it. Being a void deed, possession taken under it cannot be said to be adverse, and under color of title. The auditor sold the land short of the time prescribed by the act. It was not then a sale according to law. That must have been as well known by the purchaser as it was by the auditor."

6. In relation to the legal presumption, that every man is bound to know the law, which was relied upon to sustain the majority opinion, Chief Justice Taney says, "It has no real foundation in fact, and has been adopted, because it is necessary,

as a general rule, for the purposes of justice. And laws are, therefore, often framed to protect persons, who have acted in good faith in matters of property, from the consequence of their ignorance of law. Thus, laws confirming defective and void deeds for real property, have frequently been passed in some of the States; and their validity has been recognized by this court. Limitation laws, in regard to suits for real estate, are founded upon the same principle.

7. Any deed purporting on its face to convey title, no matter on what it may be founded, is color of title. *Dickinson v. Breeden*, 30 Ill. 279. The instrument relied on as color of title must purport on its face to convey title to the grantee. *Bride v. Watt*, 23 Ill. 507.

8. Where there is no fraud, and no proof that the color of title was acquired in bad faith, the court will presume good faith. Bad faith is not shown by a knowledge of claims of others, or of legal defects which prevent the color of title from being an absolute one. The deed itself imports good faith, unless circumstances show that the party accepting it had no faith in it. *Dickenson v. Breeden*, 30 Ill. 279.

CHAPTER XXXVIII.

OF COMPENSATION FOR IMPROVEMENTS MADE BY PERSONS IN POSSESSION UNDER TAX TITLES.

1. According to the strict rule of the common law, the owner recovers his land in ejectment, without being subjected to the condition or obligation of paying for the improvements which may have been made upon the land by an adverse possessor. 3 Kent, Com. 334; 5 Johns. 272; 1 A. K. Marsh, 444.

2. The only instance in which the common-law courts grant any relief to the person who made them, is, where, after a recovery in ejectment, the plaintiff brings an action of trespass for the mesne profits. 2 Johns. Cas. 441; 1 Johns. Cas. 281; 1 Johns. Ch. 387; 8 Wheat. 81, 82.

3. The rule of the civil law was more equitable in its character. It was, that the *bona fide* possessor was entitled to be reimbursed, by way of indemnity, the expenses of beneficial improvements, so far as they augmented the property in value. 2 Kent. 336.

4. It may be safely affirmed that equity will grant relief to the *bona fide* possessor who has made lasting and valuable improvements upon the land. Parkhurst v. Van Cortlandt, 1 Johns. Ch. 274; Botsford v. Burr, 2 Johns. Ch. 405; Benedict v. Gilman, 4 Paige, 58; Stuke's case, 1 Bland, 57; Southall v. McKeand, 1 Wash. Va. 336; Dellet v. Whitner, 1 Cheves, 213, part 2.

5. Where the occupier has been guilty of fraud, or had notice of the defect in his own title, or of a superior outstanding title, he is not entitled to compensation. Van Horn v. Fonda, 5 Johns. Ch. 388; Putnam v. Ritchie, 6 Paige. Ch. 390; McKin v. Moody, 1 Rand. 58; Morris v. Terrell, 2 Rand. 6.

6. Many of the States have from time to time enacted laws for the protection of the *bona fide* occupant, and securing to him full

compensation for any losses which he might otherwise sustain by reason of an eviction under a paramount title. These laws are variously denominated, "betterment," "improvement," and "occupying claimant" laws. They are undoubtedly constitutional, standing upon equitable principles and public policy for their support. *Ross v. Irving*, 14 Ill. 171, and cases there cited.

7. Whether these laws are applicable to improvements made under tax titles, and what kind of a tax title will constitute a proper basis for a claim of compensation, will depend upon the peculiar phraseology of each particular statute. The only case reported where a claim for improvements was set up by one in possession under a tax title, after eviction, is that of *Ross v. Irving*, 14 Ill. 171.

8. In the case cited, where the defendant was in possession, and made improvements under a tax deed which was not evidence *per se* of title, and who failed to prove a compliance by the officer, with the requirements of law, in the making of the sale and conveyance, and where the supreme court had held, that his deed was not even "a claim and color of title" under the limitation law of 1839, it was held, that he was entitled to the benefit of this law. It would therefore seem to be the settled rule in Illinois, that every possessor under a tax title, of whatever grade, is protected in his improvements, and exempted from a suit for the back rents and profits. The Pennsylvania statute of April 3, 1804, declared: That no action for the recovery of land sold for taxes shall lie unless the same be brought within five years after the sale thereof for taxes as aforesaid.

9. In the construction of this statute it has been held, that the purchaser is entitled to compensation for improvements, whether the lands, at the time of the sale, belonged to persons laboring under disabilities, or those who were legally competent to protect their own interests, by the payment of the tax or a redemption from the sale. *Creigh v. Wilson*, 1 S. & R. 38.

10. Where the land is seated at the time of the sale, the purchaser is bound to take notice of it, and if he neglects to make

the necessary inquiries, he must be treated as a *mala fide* purchaser, and cannot recover compensation for his improvements. If he knew that the land was seated, he purchases in fraud of the law, and it is clear that he cannot recover. The sale of seated land is absolutely void, and passes neither title nor color of title. But the courts go one step further, and hold, that the grantee of the purchaser, at the sale, without notice of the illegality in the sale, is not entitled to compensation. *M'Kee v. Lamberton*, 2 W. & S. 107; *Hockenbury v. Snyder*, 2 W. & S. 240; *Miller v. Keene*, 5 Watts, 350; *Cranmer v. Hall*, 4 W. & S. 36; *Lamberton v. Hogan*, 2 Barr, 22.

11. In another case, it was held that the purchaser was entitled to recover the value of his improvements, where the taxes for which the land was sold had been paid before the sale. *Gilmore v. Thompson*, 3 Watts, 106.

12. In *Robson v. Osborn*, 13 Texas, 307, it was held, that a tax purchaser was not a possessor in good faith, and not entitled to improvements, if his deed was void, and by proper diligence he might have known this want of power in the officer to sell. And it seems to be conceded, that, in all cases where the purchaser knew of the illegality of the sale, he is entitled to no compensation whatever. The fair construction of the law would be, to compensate all purchasers at tax sales, for money and labor expended in improving the land purchased, unless the illegality of their titles appears upon the face of the proceedings under which they claim.

CHAPTER XXXIX.

OF FORMS FOR CALLING TOWN MEETINGS AND OF RECORDS.

1. Every town meeting, except in the cases mentioned in the two following sections, shall be called by a warrant signed by the selectmen of such town. R. S. Ch. 3, § 2.

2. The first town meeting held in town shall be called and notified in the manner prescribed in the act of incorporation ; and if no mode is therein prescribed, by a justice of the peace in the same county. When a town, once organized, is destitute of officers, a meeting may be called on application to such justice for his warrant for the purpose, made in writing by any three inhabitants thereof. When, by reason of death, removal, or resignation, a majority of the selectmen do not remain in office, a majority of those remaining in office may call a town meeting. Ib. § 3.

3. In case the selectmen unreasonably refuse to call a town meeting, any ten or more legal voters therein may apply to a justice of the peace in the county, who is hereby authorized to issue his warrant for calling such meeting. When ten or more of the qualified voters in town in writing request the selectmen to insert a particular matter or thing in a warrant for calling a town meeting, they shall insert it in the next warrant, that they issue therefor, or shall call a special meeting for the consideration thereof. Ib. § 4.

4. In either case, the warrant shall specify the time and place at which the meeting is to be held ; and in distinct articles state the business to be acted upon at such meeting ; and no other business, matter, or thing shall be there acted upon. Ib. § 5.

5. The warrant may be directed to any constable of the town, or any individual by name, directing him to warn and notify all persons by law qualified to vote at such meeting, to assemble at the time and place appointed. Ib. § 6.

6. Such meeting shall be notified by the person to whom the warrant is directed by his posting up an attested copy thereof in some public and conspicuous place in said town seven days before the meeting; unless the town has appointed, by vote, in legal meeting, a different mode, which any town may do. In either case, the person who notifies the meeting shall make his return on the warrant, stating the manner of notice, and the time it was given. Ib. § 7.

7. When omissions or errors exist in the records or tax lists of a town or school district, or in the returns of warrants for meetings thereof, they shall be amended, on oath, according to the fact, by the officer whose duty it was to have made them correctly, while in or after he ceases to be in office. If the original warrant is lost or destroyed, the return, or an amendment of it, shall be made upon a copy thereof. Ib. § 8.

8. Every person, who is qualified by the constitution of this State to vote for governor, senators, and representatives, in the town in which he resides, is entitled to vote in the election of all town officers, and in all the business affairs thereof. Ib. § 9.

9. The annual town meetings in the state shall be held in the month of March, and the qualified voters in each town shall then choose by a major vote a clerk, three, five, or seven, inhabitants of the town to be selectmen, and overseers of the poor, when other overseers are not chosen, three or more assessors, two or more fence viewers, treasurer, surveyors of lumber, tythingmen, sealers of leather, measurers of wood and bark, constables, collectors of taxes, and other usual town officers, and in their discretion, in towns containing one thousand inhabitants, one auditor of accounts, all of whom shall be duly sworn. Treasurers or collectors of towns having more than fifteen hundred inhabitants shall not be members of the boards of selectmen or assessors. Ib. § 10.

10. The election of moderator, town clerk, selectmen, assessors,

treasurer, auditor, school committee, and town agent, shall be by ballot; and all other of said officers may be by ballot, or other method agreed on by a vote of the town. Ib. § 11.

11. During the election of moderator of town meeting, the clerk shall preside; when he is absent from any such meeting either of the selectmen or of the assessors, and if neither of those is present, any constable may lawfully do all the duties of a clerk in receiving and counting the votes for moderator. The moderator may call on the voters to give in their ballots for a clerk pro tempore, who shall be sworn by the moderator, or a justice of the peace. Ib. § 13.

12. The town clerk, before entering on the duties of his office, shall be sworn before the moderator, or a justice of the peace, truly to record all votes passed in that and other town meetings during the ensuing year and until another clerk is chosen and sworn in his stead; and faithfully to discharge all the other duties of his office. Ib. § 14.

13. Any town or parish officer may be sworn by the town or parish clerk, or by any magistrate or person authorized by law, who shall give to the officer sworn, except when sworn in presence of such clerk, a certificate of the oath administered, which he shall return to such clerk within seven days, to be placed on file. Highway surveyors may be sworn by either of the assessors, who shall give a certificate thereof, as is required in such case, of a magistrate. In either case, the clerk shall record the name of the officer and of his office, by whom sworn, and the time of taking the oath and returning the certificate. Any town, school district, parish, or corporation clerk, elected to any office and duly sworn, may record his own election, the fact that he was sworn, when and by whom. The record herein required shall be sufficient evidence that any such officer was duly sworn. If any officer fails to return such certificate, or any clerk to record such oath within ten days, he shall forfeit five dollars. Town clerks shall be paid by the town five cents for each oath recorded by them. Ib. § 17.

14. The qualified voters of a town, at a legal town meeting,

may raise such sums, as are necessary for the maintenance and support of schools and the poor; for making and repairing highways, and town ways and bridges; for purchasing and fencing burying grounds; for purchasing or building and keeping in repair a hearse and house therefor, for the exclusive use of its citizens; and for other necessary town charges. Ib. § 35. (See Ch. 11, § § 5, 6 and 9.)

15. Cities and towns may raise money for the purpose of procuring the writing and publication of their histories, and a sum not exceeding five thousand dollars in one town for the purpose of erecting a suitable monument in memory of the soldiers who sacrificed their lives in defence of their country in the recent war. Ib. § 36.

16. All plantations have power to raise and expend money for the support of schools, and making and repairing school houses, as provided in chapter eleven, sections five, sixty-six, sixty-seven, and sixty-eight, for support of the poor, as provided in chapter twenty-four, section thirty-seven; and also such sums as may be necessary to defray all legal plantation expenses. R. S. Ch. 3, § 56.

FORM OF WARRANT FOR TOWN MEETING.

(To be recorded with doings thereon, as follows :)

To A. B., constable of ———, in the county of ———,
GREETING :

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of the said town of ———, qualified by law to vote in town affairs, to assemble at the meeting-house in said town, on the ——— day of ——— next, at ——— o'clock, in the ——— noon, to act on the following articles, to wit :—

First, to choose a moderator to preside in said meeting.

Second, to choose all necessary town officers for the year ensuing.

Third, to see if the town will grant and raise such sums of money as may be necessary for the maintenance and support of schools, and the poor, and repair of roads and bridges, and to defray all other town charges for the ensuing year.

Fourth, to see if the town will vote and raise money to (here name for what purpose.)

Fifth, to see &c., (naming the object, and so on till all the objects to be included in the warrant are definitely set out separately in an article by itself.)

The selectmen give notice that they shall be in session for the purpose of revising and correcting the lists of voters at the meeting-house, or town-house, (as the case may be) at ——— o'clock in the ——— noon, on the day of said meeting.

Given under our hands this ——— day of ——— A.D., 187 .

—— —, } Selectmen
—— —, } of
—— —, }

A true copy. Attest :

—— —, Town Clerk.

Before posting up a copy of the foregoing warrant, the constable should attest the same thus :

A true copy. Attest :

A. B., Constable of P——.

RETURN OF WARRANT.

P——, —, 187 .

Pursuant to the within warrant to me directed, I have notified and warned the inhabitants of said town of P——, qualified as therein expressed, to assemble at the time and place and for the purposes therein mentioned, by posting up an attested copy of such warrant at ——— and ———, being public and conspicuous places in said town, on the ——— day of ———, being seven days before said meeting.

A. B., Constable of P——.

A true copy. Attest :

—— —, Town Clerk.

At a legal meeting of the inhabitants of the town of P——, qualified to vote in town affairs, holden at the ——— house in said town, on ———, the ——— day of ———, in the year of our Lord, one thousand eight hundred and ——— the following votes were passed :

Voted and chose by ballot, ——— ———, moderator, to preside in said meeting.

OXFORD, SS. ——— ———, 187 .

Personally appeared ——— ———, and took the oath necessary to qualify him to discharge the duties of moderator of said meeting according to law.

Before me,

—— —, Town Clerk.

Voted, and chose by ballot, — — —, Town Clerk.

OXFORD, SS. — — —, 187 .

Personally appeared — — —, and took the oath necessary to qualify him to discharge the duties of Clerk of the town of P — — for the ensuing year, according to law.

Before me, — — —, Moderator.

A true copy of certificate.

Attest: — — —, Town Clerk.

Voted, and chose by ballot, — — —, — — —, and — — —, Selectmen of town of P — — for the year ensuing.

OXFORD, SS. — — — 187 .

Personally appeared — — —, — — — and — — —, and took the oath necessary to qualify them to discharge the duties of Selectmen of the town of P — — for the year ensuing, before me, according to law.

Attest: — — —, Town Clerk.

Voted, and chose by ballot, — — —, — — — and — — —, Assessors for the town of P — — for the year ensuing.

OXFORD, SS. — — —, 187 .

Personally appeared — — —, — — — and — — —, and took the oath necessary to qualify them to discharge the duties of Assessors of the town of P — — for the year ensuing, according to law. Before me.

Attest: — — —, Town Clerk.

Voted, and chose by ballot, — — —, Treasurer of the town of P — — for one year ensuing.

OXFORD, SS. — — —, 187 .

Personally appeared — — —, and took the oath necessary to qualify him to discharge the duties of Treasurer of the town of P — — for the year ensuing according to law.

Before me. Attest: — — —, Town Clerk.

Voted, and chose by ballot, — — —, Collector of taxes for the town of P — — for the year ensuing, who agreed to collect the taxes for two cents on the dollar, and do the town's constable business free of charge.

OXFORD, SS. — — —, 187 .

Personally appeared — — —, and took the oath necessary to qualify him to discharge the duties of Collector of taxes for the town of P — —, for the year ensuing, according to law.

Before me. Attest: — — —, Town Clerk.

Voted, and chose by ballot, ———, Constable of the town of P—— for the year ensuing.

OXFORD, SS. ———, 187 .

Personally appeared ———, and took the oath necessary to qualify him to discharge the duties of Constable of the town of P—— for the year ensuing, according to law.

Before me. Attest: ———, Town Clerk.

Voted to raise ——— dollars for the support of schools. \$——

Voted to raise ——— dollars to defray town charges. ———

Voted to raise ——— dollars to repair roads and bridges. ———

Voted to

Voted to adjourn without day.

A true record. Attest:

———, Town Clerk.

CHAPTER XI.

OF THE NOTICE TO BRING IN LISTS OF TAXABLE PROPERTY.

1. Before making any assessment, the assessors shall give seasonable notice in writing to the inhabitants, by posting up notifications in some public place in the town, or notify them in such other way, as the town at its annual meeting directs, to make and bring in to them true and perfect lists of their polls and all their estates real and personal, not by law exempt from taxation, which they were possessed of on the first day of April of the same year.
R. S. Ch. 6, § 65.

FORM OF NOTICE AND RETURNS TO BRING IN LISTS OF POLLS, &c.

To the inhabitants of the town of P——, and persons liable to be assessed therein. You are hereby notified that the subscribers will be in session at ———, in said town, on ——— the first day of April next, at ten o'clock in the forenoon, for the purpose of

receiving true and perfect list of the polls, and all the estate, real and personal not by law exempted from taxation which you are possessed of in said town of P——, on the first day of April next, which lists you are requested to make and bring in.

P——, ———, 187 .

—— ———, } Assessors
 —— ———, } of
 —— ———, } P——

A true copy of the notices as we posted, one at —— ——— and one at —— ———, as the law directs.

Attest:

—— ———, } Assessors
 —— ———, } of
 —— ———, } P——

2. The assessors, or either of them, may require the person presenting such list to make oath to its truth, which either of them may administer: and if such list is produced and sworn to, and such person answers all proper inquiries in writing, as to the nature and situation of his property, and if required subscribes and makes oath thereto, such list shall be taken as true, but not a conclusive rule and limitation upon the assessors in making the assessments. Ib. § 67.

FORM OF OATH.

You solemnly swear, that the lists you have now given in to the assessors of ——, contain a true account of the polls, and all estate, real and personal, for which you are liable to be taxed in this town, either in your own right or otherwise. So help you God.

3. A poll tax shall be assessed upon every male inhabitant of this state above the age of twenty-one years, whether a citizen of the United States or an alien, in the manner provided by law, unless he is exempted therefrom by the provisions of this chapter. Ch. 6, § 1, revised statutes.

4. All real property within this state, all personal property of the inhabitants of this state, and all personal property hereinafter specified of persons not inhabitants of this state, shall be subject to taxation, as hereinafter provided. Ib. § 2.

5. Real estate, for the purposes of taxation, excepting as pro-

vided in section six, shall include all lands in this state, and all buildings and other things erected on or affixed to the same, and all townships and tracts of land, the fee of which has passed from the state since the year one thousand eight hundred and fifty, and all interest in timber upon any of the public lands derived by permits granted by the state of Massachusetts, interest and improvements in land, the fee of which is in the state ; and interest by contract or otherwise in land exempted from taxation. Ib. § 3.

6. The real estate of railroad corporations shall be taxable in the towns where it is, and be regarded as non-resident land ; but the tract of the road and the land on which it is constructed, shall not, for this purpose, be deemed real estate. Ib. § 4.

7. Personal estate for the purposes of taxation, shall include all goods, chattels, moneys, and effects, wheresoever they are ; all ships and vessels, at home or abroad ; all obligations for money or other property ; money at interest, and debts due the persons to be taxed more than they are owing ; all public stocks and securities ; all shares in moneyed, railroad, and other corporations within or without the state ; all annuities payable to the person to be taxed, when the capital of such annuity is not taxed in this state ; and all other property, included in the last preceding state valuation for the purposes of taxation. Ib. § 5.

8. The following property and polls shall be exempted from taxation :

First—The property of the United States and of this state.

Second—All property which by the articles of separation is exempted from taxation ; the real and personal property of all literary, benevolent, charitable, and scientific institutions incorporated by this state.

Third—The household furniture of each person not exceeding two hundred dollars to any one family, his wearing apparel, farming utensils, mechanics' tools necessary for carrying on his business, and musical instruments not exceeding in value fifteen dollars to any one family.

Fourth—All houses of religious worship and the pews and

furniture within the same, except for parochial purposes ; and all tombs and rights of burial, and property held by a religious society as a parsonage.

Fifth—All mules, horses, neat cattle, swine, and sheep, less than six months old.

Sixth—The polls and estates of all Indians ; and the polls of persons under guardianship.

Seventh—The polls and estates of all persons who by reason of age, infirmity, and poverty are in the judgment of the assessors unable to contribute toward the public charges.

Eighth—The polls and estates of inhabitants of islands, on which there are no highways, may be exempted from the highway tax at the discretion of the town to which they belong.

Ninth—All manufacturing establishments, &c., as are exempted from taxation for a term not exceeding ten years from the time the city or town in which the same may be located, shall, in a legal manner, assent to such exemption. Ib. § 6.

9. All dogs more than six months old, shall be taxed one dollar in the town where they are kept, on the first day of April in each year, to the owner or person who has them in possession at that time, if towns so vote. Ib. § 7.

10. The poll tax shall be assessed on each taxable person in the place where he is an inhabitant on the first day of April in each year. No person shall be considered an inhabitant of a place on account of residing there as a student in a literary seminary. Ib. § 8.

11. All taxes on real estate shall be assessed in the town where the estate lies, to the person who is the owner or in possession thereof on the first day of April in each year. In cases of mortgaged real estate, the mortgagor, for the purposes of taxation shall be deemed the owner, until the mortgagee takes possession, after which, the mortgagee shall be deemed the owner. Ib. § 9.

12. When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent half of the taxes paid by him ; and when a landlord is assessed for such real estate, he may recover half of the taxes paid by him and his rent in the same

action against the tenant, unless there is an agreement to the contrary. Ib. § 12.

13. All personal property within or without this state, except in the cases enumerated in the following section, shall be assessed to the owner in the town where he is an inhabitant on the first day of April in each year. Ib. § 13.

14. The excepted cases referred to in the preceding section are the following ;

First—All goods, wares and merchandize, all logs, timber, boards and other lumber, and all stock in trade, including stock employed in the business of any of the mechanic arts, in any town within this state, other than where the owners reside, shall be taxed in such town, if the owners, their tenants, or any person contracting under them for the building of any house, shop, store, or vessel, occupy any store, shop, mill, wharf, landing or shipyard therein, for the purposes of such tenancy or contract.

Second—All machinery employed in any branch of manufacture, and all goods manufactured or unmanufactured, and all real estate belonging to any corporation, shall be assessed to such corporation in the town or other place where they are situated or employed ; and in assessing the stockholders for their shares in any such corporation, their proportional part of the value of such machinery, goods and real estate shall be deducted from the value of such shares.

Third—All mules, horses, neat cattle, sheep, and swine shall be taxed in the town where they are kept on the first day of April, in each year, to the owner or person, who has them in possession at that time. All such animals, which are in any other town, than that in which the owner or possessor resides, for the purpose of pasturing or any other temporary purpose on said first day of April, shall be taxed to such owner or possessor in the town where he resides ; and all such animals, which are out of the state, or in any unincorporated place in the state on said first day of April, for any purpose, and being owned by, or in charge and possession of any person residing in any town in this state, shall be taxed to such owner or possessor in the town where he resides.

If a town line so divides a farm that the dwelling house thereon is in one town, and the barn or out buildings or any part of them is in another, such animals kept for the use of said farm, shall be taxed in the town where the house is.

Fourth—All personal property belonging to minors under guardianship shall be assessed to the guardian in the place where he is an inhabitant. The personal property of all other persons, under guardianship, shall be assessed to the guardian in the town, where the ward is an inhabitant.

Fifth—All personal property held in trust by an executor, administrator, or trustee, the income of which is to be paid to any married woman or other person, shall be assessed to the husband of such married woman, or to such other person, in the place of which he is an inhabitant. But if such married woman, husband, or other person resides out of the state, it shall be assessed to such executor, administrator, or trustee, in the place where he resides.

Sixth—Personal property placed in the hands of any corporation as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to the person for whose benefit it is accumulating, if within the state, otherwise, to the person so placing it, or his executors, or administrators, until a trustee is appointed to take charge of it or its income, and then to such trustee.

Seventh—The personal property of deceased persons in the hands of their executors or administrators not distributed, shall be assessed to the executors or administrators in the town where the deceased last dwelt, until they give notice to the assessors, that said property has been distributed and paid over to the persons entitled to receive it. If the deceased at the time of his death did not reside in the state, such property shall be assessed in the town, in which such executors or administrators live.

Eighth—Personal property held by religious societies shall be assessed to the treasurer thereof in the town where such societies usually hold their meetings. *Ib.* § 14.

15. Betterments and improvements made upon such lands of

literary institutions as are exempted from taxation, not including sites and buildings occupied by such institutions and their officers, shall be deemed personal property, and taxed to the tenant or owner thereof in the town where they are. Ib. § 15.

16. The stock of all toll bridges shall be taxed as personal property to the owners thereof in the towns where they reside. Ib. § 16.

17. The stock in any local corporation chartered for the purpose of supplying cities or towns with water or gas, held by any person out of the state or unknown, shall be subject to taxation in the city or town where such corporation is located or transacts its ordinary business, as provided for the taxation of bank stock, in section thirty-two of the revised statutes. Ib. § 17.

18. The powers of assessors, collectors and treasurers, and the liens on the stocks, shall be the same as provided in sections thirty-two, thirty-three, thirty-five, and thirty-six, and the duties therein imposed on cashiers, shall be performed by the treasurers of such corporations. Ib. § 18.

19. When the clerk of a corporation holding property liable to be taxed, fails to comply with the requirements of the twenty-first section of the forty-sixth chapter, whether the corporation was chartered before or since the separation of Maine from Massachusetts, such property for the purposes of taxation, shall be deemed corporate property, liable to be taxed to the corporation, although its stock has been divided into shares, and distributed among any number of stockholders. Such property, both real and personal, is made taxable for state, county, city, town, school district, and parochial taxes, to be assessed and collected in the same manner and with the same effect as upon similar unexempted property owned by individuals. If the corporation is one which has the right to receive tolls, such right or franchise may be taken and sold on warrant of distress for payment of such taxes, the same as such property is taken and sold on execution. Ib. § 19.

20. Blood animals, brought into the state and kept for the purpose of improvement of the breed, shall not be taxed at a

higher rate than stock of the same quality and kind bred in the state. Ib. § 20.

21. All goods, wares, merchandize, or other personal property, which, on the first day of April in each year, are within this state for the purpose of sale, and owned by persons residing out of the state, shall be taxed to the person or persons having them in possession for the purpose of sale. Ib. § 21.

22. Such person shall have a lien thereon, which he may enforce for the re-payment of all sums by him lawfully paid in discharge of the tax. A lien is also created upon the property for the payment of the tax, which may be enforced, by the constable or collector to whom the tax is committed, by a sale of the property, as provided in sections 106, 111, and 112, R. S. Ib. § 22.

23. If any person under the provisions of the foregoing section pays more than his proportionate rate of the tax, or if his own goods or property are applied to the payment and discharge of the whole tax, he shall be entitled to recover of the owner of the goods, wares, or merchandise such portion of the whole tax, as would be such owner's proper share. Ib. § 23.

24. When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank or banks, or other corporation in this state, for the security of the public, such investments shall not be liable to taxation except to the stockholders of the company so investing as making a part of the value of their shares in the capital stock of said company; and when the capital stock of any insurance company incorporated in this state, is taxed at its full value, the securities and pledges held by said company to the amount of said stock, shall be exempt from taxation; but if the pledge or security consists of real estate, in a town other than that where stockholder resides, it shall be taxed where it lies, and the stock shall be exempt to the amount for which it is assessed. Ib. § 24.

25. When personal property is mortgaged or pledged, it shall, for the purpose of taxation, be deemed the property of the party, who has it in his possession. Money or personal property loaned or passed into the hands or possession of another by any person

residing in this state secured by an absolute deed of real estate, shall be taxed to the grantee, the same as in case of a mortgage, although the land shall be taxed to the grantor or other person in possession. Ib. § 25.

26. The undivided real estate of any deceased person may be assessed to his heirs or devisees without designating any of them by name, until they give notice to the assessors of the division of the estate, and the names of the several heirs or devisees; and until such notice is given, each heir or devisee shall be liable for the whole of such tax, and have a right to recover of the other heirs or devisees their portions thereof when paid by him; and in an action for that purpose, the undivided shares of such heirs or devisees in the estate, upon which such tax has been paid, may be attached on mesne process; or taken on execution issued on judgment recovered in an action therefor. Or such real estate may be assessed to the executor or administrator of the deceased, and such assessment shall be collected of them the same as taxes assessed against them in their private capacity, and shall be a charge against the estate and allowed by the judge of probate; but when such executor or administrator notifies the assessors that he has no funds of the estate to pay such taxes, and gives them the names of the heirs, and the proportions of their interest in the estate to the best of his knowledge, the estate shall no longer be assessed to him. Ib. § 26.

27. Partners in mercantile or other business, whether residing in the same or different towns, may be jointly taxed, under their partnership name, in the town where their business is carried on, for all the personal property enumerated in the first paragraph of section fourteen, employed in such business; and if they have places of business in two or more towns, they shall be taxed in each town for the portion of property employed therein; and they shall be jointly and severally liable for such tax. Ib. § 27.

28. All real estate, and such as is usually called real, but is made personal by statute, may be taxed to the tenant in possession, or to the owner, whether living in the state or not, in the town where it is; and when a state, county or town tax is assessed

on lands owned or claimed to be owned, in common, or in severalty, any person may furnish the collector, or treasurer, to whom the tax is to be paid, an accurate description of his part of the land, in severalty, or his interest, in common, and pay his proportion of such tax; and thereupon his land or his interest shall be free of all lien created by such tax. Ib. § 28.

29. When assessors continue to assess real estate to the person to whom it was last assessed, such assessment shall be valid, though the ownership or occupancy has changed, unless previous notice is given of such change, and of the name of the person to whom it has been transferred or surrendered; and a tenant in common, or joint tenant, may be considered sole owner for the purpose of taxation, unless he notifies the assessors what his interest is. Ib. § 29.

30. The buildings, lands, and other property of manufacturing corporations, made personal property by their charters, and not exempt from taxation, and all stock used in factories, shall be taxed to the corporations, or to the persons having possession of their property or stock, in the town or place where the corporations are established, or the stock is manufactured; and there shall be a lien for one year on such property and stock for the payment of such tax, and it may be sold for the payment thereof as in other cases; and the shares of the capital stock of such corporations shall not be taxed to their owners. Ib. § 30.

31. All real property in this state owned by any bank incorporated by the laws of this state, or by any national bank or banking association, shall be taxed in the place where the property is situated, to said bank or banking association, for state, county and municipal taxes, according to its value, as other real estate is taxed; but the stock of such banks shall be taxed to the owners thereof where they reside, if known to be residents of this state; but the taxation of shares in such banks shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state. Ib. § 31.

32. The stock of any bank held by persons out of the state, or unknown, and that has not been certified according to the provi-

sions of chapter forty-six, section twenty-one of the revised statutes, in any city or town in this state, and is not there assessed; and the stock of any bank appearing by the books thereof to be held by persons residing out of the state, or whose residence is unknown to the assessors, shall be assessed in town where such bank is located, or transacts its ordinary business; and such city or town shall have a lien from and after the date of such assessment on such stock, and all dividends thereon until such tax and any cost or expenses arising in the collection thereof are paid. No assignment, sale, transfer or attachment shall pass any property in such stock unless the vendee first pays such tax and cost; and the cashiers of banks are required to return to the assessors of the town where such bank is located or transacts its business, all the stock in such bank not return to the assessors of other towns, according to the provisions of said section twenty-one, chapter forty-six; and such returns shall be made at the time and in the manner prescribed in said section, and shall be made the basis of taxation of such property. Ib. § 32.

33. The cashier or other officer of each bank is hereby required to exhibit on demand to the assessors of any town all the books of such bank that contain any record of the stock of such bank or any dividend declared or paid thereon, and if requested shall deliver to them a true and certified copy of so much of said record as they may require. Should any cashier neglect or refuse to perform the duties required by this and the preceding section, the assessors may doom such bank in such sum as they deem reasonable, and the assessment shall bind the bank and the tax thereon shall not be abated; and such cashier shall be liable for such neglect or refusal to the penalty prescribed in section twenty-three, chapter forty-six of the revised statutes. Ib. § 33.

34. When returns of stock in the banks and national banking associations are made according to the provisions of section twenty-one of chapter forty-six, or the preceding section, if it be found by the assessors of any town receiving such returns that the holders of such stock do not reside in such town, they shall forthwith return the names of such stockholders, with the amount

of stock held by them, to the assessors of the town where such stockholders reside, if their residence is known, and within this state, and if not, such return shall be made to the assessors of the town where the bank is located, and shall be subject to the provisions of section thirty-two, of the revised statutes. *Ib.* § 34.

35. The collector of any town to whom has been committed a tax upon the stock of any bank, shall within thirty days after the bills of assessment are delivered to him, cause a notice in writing to be delivered to the cashier or president of such bank, stating the description of stock taxed, to whom assessed, if stated in the bills, and the tax thereon. No dividend shall be paid on such stock after such notice until the tax and any cost thereon are paid. The cashier may pay such tax, and payment shall constitute a lawful charge in offset against any dividend thereon. Should such tax remain unpaid ninety days after such notice the collector may sell such stock in the manner specified in sections one hundred ten, and one hundred eleven of the revised statutes. For the purpose of collecting taxes on bank stock, collectors may act in any city, town or plantation in this state. *Ib.* § 35.

36. The treasurer of any town and any successor in office may maintain an action on the case against any bank and recover therein the tax assessed, if unpaid, and the lawful charges upon any share thereof, if there has been paid after such tax was assessed any dividend thereon; but judgment shall not be rendered in such action for a larger sum in damages than the dividend thus paid, and all such taxes and charges may be recovered in one suit if said treasurer so elects. *Ib.* § 36.

37. When any assessors, after completing the assessment of a tax, discover that they have by mistake omitted any polls or estate liable to be assessed, they may during their term of office, by a supplement to the invoice and valuation, and the list of assessments, assess such polls and estate their proportion of such tax according to the principles on which the assessment was made, certifying that they were omitted by mistake. Such supplemental assessments shall be committed to the collector with a certificate under the hands of the assessors, stating that they were omitted

by mistake, and that the powers in their previous warrant, naming the date of it, are extended thereto; and the collector shall have the same power, and be under the same obligations to collect them, as if they had been contained in the original list; and all assessments shall be valid, notwithstanding that by such supplement the whole amount exceeds the sum to be assessed by more than five per cent., or alters the proportion of tax allowed by law to be assessed on the polls. *Ib.* § 37.

38. When a state tax is ordered by the legislature, the treasurer of state shall forthwith send his warrants directed to municipal officers of each town, or other place in this state, requiring them to assess upon the polls and estates of each, its proportion of such state tax; and the amount of such proportion shall be stated in the warrant. *Ib.* § 38.

39. The treasurer, in his warrant, shall require said officers to make a fair list of their assessments, setting forth in distinct columns against each person's name, how much he is assessed for polls, how much for real estate, and how much for personal estate, distinguishing any sum assessed to such person as guardian, or for any estate in his possession as executor, administrator, or trustee; to insert in such list the number of acres of land assessed to each non-resident proprietor, and the value at which they have estimated them; to commit such list, when completed and signed by a majority of them, to the collector or collectors, constable or constables of such town or other place, with their warrant or warrants in due form of law, requiring them to collect and pay the same to the treasurer of state, at such time as the legislature, in the act authorizing such tax, directed them to be paid; and to return a certificate of the names of such officers, and the amount so committed to each, one month at least before the time at which they are required to pay in such tax. *Ib.* § 39.

40. In the assessment of all state, county, town, plantation, parish or society taxes, the assessors thereof shall govern themselves by the rules contained in this chapter, until otherwise provided by the legislature, except in parishes and societies where a different provision for assessing their taxes is made; and shall

assess on the taxable polls therein one-sixth part, as nearly as may be, of the whole sum to be raised ; but the whole poll tax assessed in one year upon an individual for town, county and state purposes, except highway taxes separately assessed, shall not exceed three dollars. The same rule shall be observed in the assessment of highway taxes ; and the residue of such taxes shall be assessed on the estates according to their value. Ib. § 40.

PERSONAL LIABILITY OF ASSESSORS.

41. The assessors of towns, plantations, school districts, parishes and religious societies, shall not be responsible for the assessment of any tax, which they are by law required to assess but the liability shall rest solely with the corporations, for whose benefit the tax was assessed, and the assessors shall be responsible only for their own personal faithfulness and integrity. Ib. § 41.

FORM OF INVENTORY AND

The following pages contain an inventory and valuation of polls and estates, real taxes for the year 18—, as it existed on the first day of April of said year, with the

POLLS AND

Name of Resident Owners.	DESCRIPTION OF REAL ESTATE.				No. of Polls.	No. of Oxen.	Value.	No. of Cows.	Value.	No. of 3 year olds.	Value.	No. of 2 year olds.	Value.	No. of yearlings.	Value.	No. of Horses.	Value.	No. of 3 year old colts.	Value.	No. of 2 year old colts.	Value.
Doe, John	House and Lot in P. Village occupied by him,				1	\$	600														
do.	Store and Lot in P. Village occupied by him,				1-4		500														
do.	The Wm. Jones Farm,	1-6			100		1000														
Nye, James	North half of	1-3			50		50														
Nye, John	Lang Farm on the Hill formerly owned by John Jones, being parts of	1-4			75		500														
Park, Asa O	His Homestead Farm, on which he resides.	2-5			100		2000														
Pope, G. W.	One individual half of	3-3			50		50														
Piper, Jac'b	The Island in Po River, opposite N. Walker's in said P.,				6		50														
Pike, Isaac	Lunt's Gore, being	4-6			100		100														
do.		4-7			100		100														
Roe, Rich'd	A piece of Land in Lot 5, Range 7, bounded as follows:—Commencing at the northeast corner of said lot, thence running on the east line of said lot forty rods, thence west an parallel with north line of said lot forty rods, thence north parallel with east line of said lot 40 rods to north line, thence on said north line 40 rods to place of beginning.				10		100														
Reed, Ira	Homestead Farm, on which he resides,				150		1500														
Spear, Geo.	Spear's Block on Main street, in P. Village, 50 x 100 feet, adjoining Asa Ames' Block on the east,						5000														
Weeks, Ira	House No. 3 on Main street, 20x40 feet, in Jones' Block, in which he resides,						2000														

PERSONAL

Names of non-Resident Owners and Unknown.	DESCRIPTION OF REAL ESTATE.				No. of Polls.	No. of Oxen.	Value.	No. of Cows.	Value.	No. of 3 year olds.	Value.	No. of 2 year olds.	Value.	No. of yearlings.	Value.	No. of Horses.	Value.
Abbott, Jno	Cyrus Keen Farm,	6-2			30		\$200										
Bird, Enos		10-8			100		100										

The foregoing pages contain an inventory and valuation of polls and estates, real town taxes for the year 18—, as it existed on the first day of April of said year.

The inventory and valuation tax lists, when recorded, should be certified and signed

and personal, liable to be taxed in the town of P—, for state, county and town appraisal thereof in dollars.

_____, } Assessors
_____, } of
_____, } P—.

PERSONAL ESTATE.

\$	Value.
\$	No. of 1 year old Colts.
\$	Value.
\$	No. of Mules over 6 months old.
\$	Value.
\$	No. of Sheep over 6 months old.
\$	Value.
\$	No. of Swine over 6 months old.
\$	Value.
\$	No. of Dogs over 6 months old taxed by vote of Town.
M	Logs, Lumber and Timber.
\$	Value.
\$	No. of Carriages.
\$	Value.
\$	Amt. of Household Furniture exceeding \$200.
\$	Amt. of Musical Instruments exceeding \$15.
\$	Amount of Money on hand.
\$	Money at interest, and debts due more than owing.
\$	Bank Stock.
\$	Am. of obligations for money or other property
\$	Amount of stock in trade.
\$	Amt. of public stock and securities not exempt
\$	No. of shares in moneyed, railroad and other corporations.
\$	Value.
\$	Amount of annuities on capital not taxed in the State.
\$	Amt. of goods, wares and p. property in possession for sale, owned by persons out of State
\$	Amt. of personal estate held as Ex'r, Adm'r, Guardian and Trustee.
\$	Amt. of stock and property in Manr. Corporations not exempt from taxation.
\$	Amount of personal property held as Tr. of religious societies.
\$	Amount of stock employed in mechanic arts.
\$	Amount of stock in Toll Bridges.
\$	Amt. of stock in gas and water corporations.
\$	No. of Buildings on others' lands.
\$	Value.
\$	No. of Ships.
\$	Value.
\$	No. of Vessels.
\$	Value.
\$	Total valuation of personal estate.

ESTATE.

\$	No. of 3 year old Colts.
\$	Value.
\$	No. of 2 year old Colts.
\$	Value.
\$	No. of 1 year old Colts.
\$	Value.
\$	No. of Mules over 6 months old.
\$	Value.
\$	No. of Sheep over 6 months old.
\$	Value.
\$	No. of Swine over 6 months old.
\$	Value.
M	Logs, Lumber and Timber.
\$	Value.
\$	No. of Carriages.
\$	Value.
\$	Amt. of Household Furniture exceeding \$200.
\$	Amt. of Musical Instruments exceeding \$15.
\$	Amount of stock in trade.
\$	Amt. of goods, wares and p. estate in possession for sale, owned by persons out of State.
\$	Amt. of p. estate belonging to adult wards.
\$	Amt. of stock employed in mechanic arts.
\$	Amt. of machinery, goods manufactured or unmanufactured.
\$	Amt. of p. estate in hands as Ex'r, Adm'r.
\$	Amt. of p. estate held as Tr. of religious societies.
\$	No. of buildings, personal estate.
\$	Value.
\$	Total valuation of personal estate.

and personal, liable to be taxed in the town of P—, for state, county and

_____, } Assessors
_____, } of
_____, } P—.

by the assessors as above indicated.

CHAPTER XLI.

OF THE FORM AND METHOD OF ASSESSMENT.

1. The assessors shall assess upon the polls and estates in their town all town taxes and their due proportion of any state or county tax, according to the rules in the then last act for raising a state tax and in this chapter; make perfect lists thereof under their hands; and commit the same to the constable or collector of their town, if any, otherwise to the sheriff of the county or his deputy, with a warrant under their hands, in the form hereinafter prescribed. R. S. Ch. 6, § 70.

2. They may add their proportion of the state and county tax to any of their other taxes, and make out one warrant and their certificates accordingly. Ib. § 71.

3. They may assess on the polls and estates such sum over and above the sum committed to them to assess, and not exceeding five per cent. thereof, as a fractional division thereof renders convenient, and certify that fact to their treasurer. Ib. § 72.

4. They shall make a record of their assessment and of the invoice and valuation from which it was made; and before the taxes are committed to the proper officer for collection, they shall deposit, or a copy of it, in the assessors' office, if any, otherwise with the town clerk, there to remain; and any place, where the assessors usually meet to transact business and keep their papers or books, shall be considered their office for this purpose. Ib. § 73.

5. If any money not raised for a legal object, is assessed with other moneys legally raised the assessment shall not be void; nor shall any error, mistake, or omission by the assessors, collector, or

treasurer, render it void ; but any person paying such tax, may bring his action against the town in the supreme judicial court for the same county, and shall recover the sum not raised for a legal object, with twenty-five per cent. interest and costs, and any damages he has sustained by reason of the mistakes, errors, or omissions of such officers. *Ib.* § 114.

6. No assessment of a tax by a town or parish will be legal, unless the sum assessed is raised by vote of the qualified voters, at a meeting legally called and notified. *Ib.* § 64.

7. There must be in the assessment something to identify the land. *Lyman v. Philadelphia*, 56 Penn. St. Reports, 488.

8. The land taxed must be definitely and distinctly described in the assessment, the assessment is the foundation on which rests all the subsequent proceedings. *Greene v. Lunt*, 58 Me.

9. For a description of the land the collector must obtain his information from the assessment, he has no authority to add to or take from it. Nor can the assessors after the completion of the tax, add to the description so as to make that certain which was before uncertain. The assessment must be complete in and of itself as much as a deed or contract. *Greene v. Lunt*, 58 Me.

FORM OF

Assessment of money and highway tax and names of persons
cription of real estate assessed with its value, and the value of
by surveyors for 187 .

Name of Resident Owners.	DESCRIPTION OF REAL ESTATE.			
	No. of Lot.	No. of Range.	No. of Acres.	Value of Real Estate.
Doe, John	House and Lot in P. Village, occupied by him,			\$ 600
do.	Store and Lot in P. Village, occupied by him,			500
do.	The Wm. Jones Farm.			1000
Nye, James	North half of			50
Nye, John	Lang Farm on the hill, formerly owned by John			500
	Jones, being parts of			75
Park, Asa O	His homestead farm, on which he resides,			100
Pope, G. W.	One undivided half of			50
Piper, Jacob	The island in Po River, opposite N. Walker's in			6
	said P.			100
Pike, Isaac	Lunts Gore being			100
do.	A piece of land in Lot 5, Range 7, as described			100
Roe, Richard	in inventory and valuation,			10
	Homestead Farm on which he resides.			1500
Reed, Ira	Spear's Block on Main Street, in P Village, 50			
Spear, Geo.	x 100 feet, adjoining Asa Ames Block on the			
	west,			5000
Weeks, Ira	House No. 3 on Main Street, 20 x feet, in Jones'			2000
	Block, in which he resides,			
Names of non resident owners and unknown.				
Abbott, John	Cytus Keen Farm,			200
Bird, Enos				100

(As a matter of safety and convenience for all parties, it will be well to be conveniently done, as described in the inventory and valuation. In case similar to that in the case of Roe, Richard, as above.)

REMARKS ON THE FOREGOING

We have assessed on the Polls and Estates of resident proprietors and on three thousand dollars voted by the town, with an overlay not exceeding five on the highways in said town: the same we have committed to the several cents on the dollar. We have assessed on (State No. of Polls,) (amount in dollars.

P ———, ———, A. D. 18——.

We have assessed the money tax on the polls and estates of resident inhabit- town of P——— for the year 18 , at ——— cent ——— mills on the dollar. it being the town farm and stock, making the inventory stand \$———. We sessed ——— dollars and ——— cents state tax (\$———); also a county tax voted by the town last March to defray the town charges, (\$———.). Also dollars and ——— cents. (\$———,) the same we have committed to the col- paying over to the several treasurers.

P———, ———, A. D. 18——.

ASSESSMENT.

157

liable to be taxed in the town of P——, for 187 , with des-
personal estate assessed. Also deficient highway duly returned

Value of Personal Estate.	Sum Total.	No. of Polls.	HIGHWAY TAX FOR THE YEAR 187—				MONEY TAX FOR YEAR 187— FOR STATE, COUNTY AND TOWN.				
			Poll Tax.	Tax on Real Estate.	Tax on Personal Estate.	Sum Total of Tax.	Poll Tax.	Tax on Real Estate.	Tax on Personal Estate.	Deficient High- way Tax for 18	Sum Total of Tax.
\$ 820	\$1420	1	\$1 00	\$ 12 00	\$16 40	\$29 40	\$ 1 00	\$ 6 00	\$ 8 20	\$	\$15 00
				10 00		10 00		5 00			5 00
				20 00		20 00		10 00			10 00
100	1500	1	1 00	1 00	2 00	4 00	1 00	50	1 00		2 50
		1	1 00	10 00		11 00	1 00	5 00			6 00
		1	1 00	40 00		41 00	1 00	20 00			21 00
		1	1 00	1 00		2 00	1 00	50			1 50
		1	1 00	1 00		2 00	1 00	50			1 50
		1	1 00	2 00		3 00	1 00	1 00			2 00
		1	1 00	2 00		3 00	1 00	1 00			2 00
		1	1 00	2 00		3 00	1 00	1 00			2 00
		1	1 00	30 00		31 00	1 00	15 00			16 00
		1	1 00	100 00		101 00	1 00	50 00			51 00
		1	1 00	40 00		41 00	1 00	20 00			21 00
						4 00					
						2 00					
				4 00		4 00		2 00			2 00
				2 00		2 00		1 00			1 00

_____, } Assessors
_____, } of
_____, } P——.

give as full a description of the real estate in the list of assessment as can
of a long description refer to the inventory and valuation for description—

ASSESSMENTS FOR 18 .

the estate of non-resident proprietors in the town of P——, the sum of
per cent., the aforesaid sum to be raised and expended in labor and materials
Highway Surveyors in due form of law. We have assessed the tax at——
words,) at —— dollar each, with an inventory of (in figures,) ——

_____, } Assessors
_____, } of
_____, } P——.

itants and on the estate of non-resident proprietors liable to be taxed in the
Before making the money tax we deducted from the inventory ——dollars,
assessed on (state No. of polls,) at —— dollar on the poll. We have as-
of —— dollars and —— cents (\$ ——) county tax, and —— dollars
—— dollars for the support of schools, (\$ ——,) with an overlay of——
lector for collection with a warrant in due form of law for collecting and

_____, } Assessors
_____, } of
_____, } P——.

CHAPTER XLII.

FORMS OF THE WARRANTS, LISTS AND COMMITMENT.

No. 1.

— ss. A B, constable or collector of the town of — within the county of — GREETING :

In the name of the State of Maine, you are hereby required to levy and collect of the several persons named in the list herewith committed unto you, each one his respective proportion therein set down, of the sum total of such list, it being this town's proportion of the state tax for the year 18—; and you are to transmit and pay in the same unto —, treasurer of the state, or to his successor in that office, and to complete and make up an account of your collections of the whole sum on or before the — day of —. And if any person refuses or neglects to pay the sum he is assessed in the said list, you are to distrain his goods or chattels to the value thereof; and the distress so taken to keep for the space of four days at the cost and charge of the owner; and if he does not pay the sum so assessed within the said four days, then you are to sell at public vendue such distress for the payment thereof with charges; first giving forty-eight hours notice of such sale by posting up advertisements thereof in some public place in the town (or plantation, as the case may be;) and the overplus arising by such sale, if any, besides the sum assessed and the necessary charges of taking and keeping the distress, you are immediately to restore to the owner; and for want of goods and chattels, whereon to make distress, besides those implements, tools and articles of furniture, which are by law exempt from attachment for debt, for the space of twelve days, you are to take the body of such person so refusing or neglecting, and him commit unto the common jail of the county, there to remain until he pays the same or such part thereof, as shall not be abated by the assessors for the time being, or the county commissioners for the said county.

Given under our hands, by virtue of a warrant from the treasurer aforesaid, this — day of —.

— —, }
— —, } Assessors.
— —, }

6. The warrant to be issued for the collection of county or town taxes, shall be made out by the assessors in the same tenor,

changing those parts which should be changed to adapt it to the particular case. R. C. Ch. 7, § 95.

7. Where the assessors have assessed any county or state tax and committed it to the proper officer for collection, they shall return to the county and state treasurers a certificate thereof with the name of such officer. Ib. § 74.

And a certificate of the assessment of any state tax shall be in substance as follows :

Pursuant to a warrant from the treasurer of the State of Maine dated the — day of —, we have assessed the polls and estates of the — of —, the sum of —, and have committed lists thereof to the — of said, viz : to —, with warrants in due form of law for collecting and paying the same to —, treasurer of said state, or his successor in office on or before the — day of — next ensuing.

In witness whereof, we have hereunto set our hands at —, this — day of — in the year —.

— —, }
— —, } Assessors.
— —, }

A certificate of the assessment of any county tax, same as above, in form :

STATE OF MAINE.

No. 2.

County of — ss. To —, Collector of taxes of the town of —, within the county of — aforesaid,

GREETING.

In the name of the State of Maine, you are hereby required to levy and collect of the several persons named in the list herewith committed unto you, each one his respective proportion therein set down, of the sum total of such list it being — dollars and — cents, this town's proportion of a tax or assessment of — dollars and cents, granted and ordered by a law of the Legislature of said state, passed the — day of — A.D. 187 , to apportion and assess the same on the inhabitants of this state, and you are to transmit and pay the same unto —, State treasurer, or to his successor in that office, and to complete and make up an account of your collection of the whole sum on or before the — day of — 187 , and also including the further sum of — dollars, and — cents, this town's proportion of a tax or assessment of — dollars, and —

cents, granted by a resolve of the Legislature of said state, passed at the last session, upon an estimate made by the court of county commissioners at this session begun and held at — in and for said county, on the — day of — A.D. 187 , of sums necessary for defraying the charges of the county for the year ensuing; and you are to pay in the said sum of — dollars and — cents, unto —, treasurer of said county, or his successor in office, on or before the — day of — A.D. 187 . Also including the further sum of — dollars and — cents, voted and raised by said town of — at the annual town meeting on the — day of — last past, for the support of schools, and of the poor, and other current expenses, besides the further sums of — dollars and — cents, the overlay authorized by law; and — dollars and — cents, the highway deficiencies for the past year, duly returned by the highway surveyors, and put in a distinct column. And you are to pay in the said sums, amounting in the whole to — dollars and — cents, unto — treasurer of said town, or to his successor in office, one half part thereof, on or before the — day of — next, and the remainder on or before the — day of — next. And if any person shall refuse or neglect to pay the sum he is assessed in said list, to distrain the goods and chattels of such person, to the value thereof; and the distress so taken to keep for the space of four days, at the cost and charge of the owner; and if he shall not pay the sum so assessed within the said four days, then you are to sell at public vendue, the distress so taken, for the payment thereof, with charges; first giving forty-eight hours notice of such sale, by posting up advertisements thereof, in some public place in said town; and the overplus arising by such sale, if any there be, besides the sum assessed, and the necessary charges for taking and keeping the distress, you are immediately to restore to the owner, and for want of goods and chattels, whereon to make distress, besides those implements, tools, and articles of furniture exempted by law from attachment for debt, for the space of twelve days, you are to take the body of such person, so refusing or neglecting, and commit him into the common jail of the county of —, there to remain until he pay the same, or such part thereof as shall not be abated by the assessors for the time being, or the county commissioners for the said county of —

Given under our hands at said — this — day of —, A.D. 187 .

— —,)	Assessors
— —,)	of
— —,)	—

To ———, collector of taxes ——— of the town of ———, aforesaid.

Herewith are committed to you true lists of the assessments of the polls and estates of the persons therein named, you are to levy and collect the same, of each one his respective proportion, therein set down, of the sum total of ——— dollars and ——— cents, (being the amount of the lists contained herein according to the exigency of any lawful warrant touching the same to you committed.

Given under our hands at ———, this ——— day of ———, A. D. 187 .

————, } Assessors
 ———, } of
 ———, }

Collector's Tax List for 187 .

Name of Resident Owners.	DESCRIPTION OF REAL ESTATE.	No. of Lot.	No. of Range.	No. of Acres.	No. of Polls.	VALUE.		Poll Tax.	Tax on Real Estate.	Tax on Personal Estate.	Tax on Personal Estate.	Deficiency of Highway Tax for 187	Total amount of Taxes.	Remarks on Payment.
						Real Estate.	Personal Estate.							
Doe, John	House & Lot in P. Village, occupied by him,			1		\$	\$	\$	c.	\$	c.	\$	c.	
do.	Store & Lot in P. Village, occupied by him,			1-4										
do.	The William Jones Farm,	1	6	100										
Nye, James	North half of.	1	4	50										
Nye, John	Lang Farm on the hill, formerly owned by	1	3	75										
	John Jones, being parts of	1	4											
Park, Asa O	His Homestead Farm on which he resides,	2	6	100										
Pope, G. W.	One undivided half of	3	3	50										
Piper, Jac'b	The Island in Po River opposite N. Walker's in said P.													
Pike, Isaac		4	6	6										
do.	Lunt's Gore, being	4	7	100										
Roe, Rich'd	A piece of land in Lot 5, Range 7, as described in Inventory and Valuation,			10										
Reed, Ira	Homestead Farm on which he resides			150										
Spears, Geo.	Spear's Block on Main Street, in P. Village, 50 x 100 feet, adjoining Asa Ames Block on the west,													
Weeks, Ira	House No. 3 on Main Street, 20 x 40 feet, in Jones' Block, in which he resides,													
Names of non-resid't owners and unknown.														
Abbott, Jno	Cyrus Keen Farm,	6	2	30										
Bird, Enos		10	8	100										

We hereby certify that the foregoing lists, as made by us, are perfect lists of assessments for the year 187 , which we have this ——— day of ——— 18 , committed with a warrant of this date under our hands to ———, Collector of said P———, for collection.

Attest :

————, } Assessors
 ———, } of
 ———, } P——.

The warrant and commitment of the lists of taxes must be recorded in the record of assessments in assessors office.

CHAPTER XLIII.

COLLECTIONS OF TAXES IN INCORPORATED PLACES ON REAL ESTATE OF RESIDENT OWNERS.

1. For all taxes legally assessed on real estate belonging to resident proprietors and on equitable interests assessed under section four of this chapter, a lien is hereby created, which shall continue in full force until the payment thereof. If any such tax remains unpaid for the term of nine months from the date of the assessment, the collector may give notice thereof, and of his intention to sell so much of such real estate or interest as is necessary for the payment of said tax and all charges, by posting notices thereof in the same manner and at the same places, that warrants for town meetings are therein required to be posted, six weeks before the day of sale, designating the name of the owner, if known, the right, lot and range, the number of acres as near as may be, the amount of tax due and unpaid, and such other short description as is necessary to render it certain and plain; and shall lodge with the town clerk a copy of such notice, with his certificate thereon, that he has given notice of the intended sale as required by law. Such copy and certificate thereon shall be recorded by said clerk, and the record so made shall be open to the inspection of all persons interested. It shall be the duty of the clerk to furnish to any person desiring it, an attested copy of such record, on receiving payment or tender of payment of a reasonable sum therefor. R. S. Ch. 6, § 167.

FORM OF COLLECTOR'S NOTICE OF SALE.

N O T I C E.

The resident proprietors of the following tracts of land or real estates in the town of P——, in the county of——, are notified that the same are taxed in the tax list committed to the subscriber, the collector of taxes for the said town of P——, for the year one thousand eight hundred and ——, that the taxes assessed on the same remain unpaid, that nine months from the date of the assessment has expired.

Name of Owners.	ESTATE TAXED.	No. of Lot.			No. of Range.	No. of Acres.	Amt. of tax unpaid.
Doe, John	House and lot in P. Village occupied by him						\$ cts.
Nye, James	North half of	1	4	50		1	6 00
Pope, Geo. W.	One undivided half of	3	3	50			50
Reed, Ira	Homestead and farm on which he resides					150	15 00

And if no person shall appear to discharge said tax on or before the —— day of —— next, at —— o'clock in the —— noon, I shall proceed to sell at —— in the said town of P——, by public auction to the highest bidder, so much of said respective tracts or parcels of real estate or land as shall be sufficient to discharge said taxes and all necessary charges.

P——, ——, 18——.

——, Collector of taxes for said town of P——.

FORM OF THE ATTEST AND CERTIFICATE TO BE ANNEXED
TO COPY OF ABOVE NOTICE TO BE RECORDED
BY TOWN CLERK.

A true copy. Attest:

——, Collector of taxes for said town of P——.

I hereby certify that the foregoing is a true copy of the notice of the aforesaid intended sale, and that I have given notice of said intended sale as required by law.

P——, ——, 18——.

——, Collector of taxes for said town of P——.

Received and recorded, _____, 18—. _____, Town Clerk.

2. After the land is so advertised, and at least ten days before the day of sale, the collector shall notify the owner or occupant thereof of the time and place of sale by delivering to him in person, or leaving at his last and usual place of abode, a written notice signed by him, therein stating the time and place of sale and the amount of the taxes due. If such tax is paid before the time of sale, the amount to be paid for such advertisements and notice shall not exceed one dollar. *Ib.* § 168.

FORM OF NOTICE TO OWNER.

STATE OF MAINE.

— ss. To —, of P —, in said county. The amount of tax now due and unpaid, which was assessed on the farm on which you now reside, in said P —, on the assessment against you in said town for the year 18 —, and committed to me for collection is — dollars and — cents. I hereby notify you that I shall, on the — day of —, 18 —, at — of the clock, in the forenoon, proceed to sell at the — of —, in said P —, by public auction, so much of said farm as shall be sufficient to discharge said tax, and all necessary charges, unless said tax and charges are paid before that time, having given due notice of said sale, as by law required.

P____, _____, 18____,
_____, Collector of taxes for the town of P_____.

3. When no person appears to discharge the taxes duly assessed on any real estate of resident owners, with costs of advertising, on or before the time of sale, the collector shall proceed to sell at public auction to the highest bidder, so much of such real estate or interest, as is necessary to pay the tax then due, with three dollars for advertising and selling it and twenty-five cents more for each copy required to be lodged with the town clerk. If more than one right, lot or parcel of land is so advertised and sold, the said sum of three dollars shall be divided equally among the several lots or parcels advertised and sold at any one time; and the collector shall be entitled to receive, in addition, fifty cents on

each parcel of real estate so advertised and sold, when more than one parcel is advertised and sold. Ib. § 169.

4. When any real estate is so sold for taxes, the collector shall, within four days after the day of sale lodge with the treasurer of his town a certificate, under oath, designating the quantity of land sold, the name of the owner or owners of each parcel, and the name of the purchaser or purchasers; what part of the amount on each was tax, and what was costs and charges; and also a deed of each parcel sold, running to the purchasers. The collector shall be allowed and paid by the treasurer, to be re-paid by the person redeeming or by the purchaser, on delivery of the deed; the sum of fifty cents for each deed. Ib. § 170.

5. No officer, to whom a warrant for collection of taxes is committed, shall sell any real estate for non-payment of taxes after two years from its date. Ib. § 173.

FORM OF COLLECTOR'S CERTIFICATE AND OATH.

To the town Treasurer of the town of P——, in the county of ———, and state of ———.

This is to certify that I, ———, collector of taxes for the town of P——, aforesaid, for the year 18——, pursuant to the law of said State, I have sold this ——— day of ———, A.D. 18——, the real estate of ———, resident owners or proprietors for payment of taxes at said time remaining due and unpaid, and in the schedule following is set forth the amount of land sold, being the same on which the taxes were unpaid, the name of the owner of said lots or parcels of land, the amount of taxes for which each was sold, and the legal cost and charges of said sale and the purchaser of each parcel, and I have executed deeds of the several parcels to the persons entitled thereto, and on this ——— day of ———, A.D. 18——, I lodged the certificate and said deeds with you to be disposed of as the law requires.

SCHEDULE.

Name of Owner.	Quantity of Land sold.	Amount Tax due and unpaid.	Cost and Charges.	Name of Purchaser.
Doe, John	$\frac{1}{4}$ acre	\$6 00	\$1 50	A—— B——
Nye, James	50 acres	50	1 50	C—— D——
Pope, Geo. W.	50 acres	50	1 50	C—— D——
Reed, Ira	10 acres	15 00	1 50	F—— G——

In witness of all which I hereunto subscribe my name this _____
day of _____, A.D. 18 .

_____, Collector of the town of P_____ for 18 .

OXFORD, SS.

_____, 18 .

Personally appeared the above named _____, and made
oath that the above certificate by him subscribed is true.

Before me,

_____, Justice of the Peace.

_____, 18 . Lodged with me and recorded.

_____, Town Treasurer of P_____.



FORM OF DEED.

To all to whom these presents shall come :

I, _____, collector of taxes for the town of P_____, in the
county of _____, and state of Maine, for the year 18 , legally
chosen and sworn, send greeting :

Whereas, the assessors of the town of P_____ aforesaid, have
assessed _____ in the sum of eighty-five cents, the (here
describe the land taxed) resident proprietor of land in said
P_____, in the list of assessments they have committed to
me to collect, and whereas no person has appeared to dis-
charge said tax, although I have advertised the same by
posting notices of my intention to sell so much of said real estate
as would be necessary to discharge said tax and all intervening
charges, at three public places in said town where warrants for
town-meetings are required to be posted six weeks before the day
of sale; and at least ten days before the sale I delivered to the
owner a written notice, stating the time and place of sale and the
amount of tax due. Therefore, know ye, that I, _____,
collector of taxes as aforesaid, in consideration of the sum of _____
dollar and _____ cents to me paid by _____, of _____,
I do hereby give, grant, sell and convey to the said _____,
his heirs and assigns, the following described real estate situated in
the town of _____, _____, it being _____ containing _____
acres. The same having been struck off to the said _____
_____; he being the highest bidder therefor, at a public auction
legally notified and holden at the store of _____, in said
_____ on the _____ day of _____ 18 . To have and to hold the
same to the said _____ and his heirs and assigns, forever to
his and their use, subject, however, to the right of redemption of the
owner thereof, or his heirs or assigns at any time within the time
specified by law; and I do covenant with the said _____,
and his heirs and assigns, that I gave notice of the intended sale of
said land according to law, and that I have observed the directions
of the law in all respects in the premises. In witness whereof, I

have hereunto set my hand and seal this _____ day of _____, in the year of our Lord eighteen hundred and _____, [L.S.] Collector.

Signed, sealed and delivered in presence of _____.

OXFORD, ss.— _____, 18 .

Personally appeared the above-named _____, and acknowledged the above instrument to be his free act and deed.

Before me,

— - —, Justice of the Peace.

6. It shall be the duty of the collector making any sale of real estate for non-payment of taxes, within thirty days after such sale, to make a return, with a particular statement of his doings in making such sale, to the clerk of his town; who shall record it in the town records; and said return, or if it is lost or destroyed, an attested copy of the record thereof, shall be evidence of the facts therein set forth in all cases where such collector is not personally interested. Ib. § 176.

FORM OF COLLECTOR'S RETURN.

To—, town clerk of the town of P—, in the county of —, and state of —:

Pursuant to the provisions of law, I caused the taxes assessed on the real estate of resident owners or proprietors in the said town of P—, for the year 18 , and that remained unpaid for the term of nine months from the date of the assessment and in the list of assessments by the assessors of said town, committed to me on the — day of — A.D. 18 , together with a warrant under their hands for the collection of the same in the form by law prescribed, and said taxes remaining unpaid as aforesaid, and whereas no person appeared to discharge the same, although after the expiration of said term of nine months, to wit,—on the — day of —, A.D. 18 , I gave notice of the non-payment of said taxes and of my intention to sell so much of said real estate as would be necessary for the payment of said taxes, and all charges by posting notices thereof in the same manner and at the same places in said town of P—, that warrants for town-meetings are required to be posted in said town six weeks before the day of sale, designating in said notices the name of the owner and a certain and plain description of said real estate, the right lot and range, and the number of acres and the amount of taxes due and unpaid on each parcel of real estate; and I also duly lodged with the town clerk of said town of P—, a copy of such notice with my certificate thereon, that I had given notice of the intended sale as required by law, and after the said real estate was so advertised for sale as aforesaid, and at least

ten days before the day of sale, I notified the owner and occupant thereof of the time and place of sale, by delivering to the owner and occupant of the real estate so advertised, in person, a written notice signed by me, therein stating the time and place of sale and the amount of taxes due and unpaid; and I also, in said notice so posted as aforesaid, gave notice that if no person appeared to discharge said taxes and cost of advertising on or before the _____ day of _____ A. D. 18 , at _____ of the clock in the _____ noon (being the time of said sale,) I should proceed to sell at _____ in said town of P—, (being the place of sale,) at public auction to the highest bidder, so much of said real estate as would be necessary to pay the taxes then due and necessary intervening charges, and afterwards, in pursuance of said notice, to wit,—on the _____ day of _____, A.D. 18 , at _____, in said town of P—, being the day and place of sale, at _____ of the clock in the _____ noon, being the hour of sale, I proceeded to sell according to the tenor of said notices the estate upon which the taxes so assessed remained unpaid, and it became necessary to sell the whole amount of the real estate so assessed and advertised, as no person would pay the taxes and legal charges for a less amount of said real estate, and in the schedule following is set forth each parcel of the estate so offered for sale, and the owner or occupant thereof, the amount of the taxes and cost and charges for which it was sold, the quantity sold and the name of the purchaser; and I have made and executed deeds of the several parcels to the purchaser, the person entitled thereto, and within four days after the day of sale, to wit,—on the _____ day of _____ A.D. 18 , I lodged with the treasurer of said town of P—, said deeds to be disposed of as the law requires; and also on the same day, being within four days after the day of said sale, I lodged with said treasurer my certificate under oath, designating the quantity of land sold, the name of the owner of each parcel and the name of the purchaser, what part of the amount for which each parcel was sold, was tax, and what was cost and charges, and also a deed of each parcel running to the purchaser.

Name of Owner and Occupant.	SCHEDULE. Estate offered for sale and sold.	Amount of tax, cost and charges.	Quantity of land sold. No. acres.	Name of Purchaser.
Doe, John	House and lot in P— village occupied by him,	\$ 7 50	1/2 acre	A—B—
Nye, James	North half of lot 1, range 4	2 00	50 acres	C—D—
Pope, Geo. W.	One undivided half of lot 3, range 3	2 00	50 acres	C—D—
Reed, Ira	Homestead farm on which he resides	16 50	10 acres	F—G—

In witness of all which I have hereunto subscribed my name this
 _____ day of _____ A.D. 18 .

_____, Collector of taxes for the town of _____, for the year
 18 .

Received _____ 18 , and recorded on _____ records.

Attest :

_____, Town Clerk.

7. Any person, to whom the right by law belongs, may, at any time within two years from the time such certificate is lodged with the town treasurer, redeem any real estate or interest of resident proprietors sold for taxes, on paying into the town treasury for the purchaser, the full amount so certified to be due, both taxes and costs, including that allowed for the deed or deeds, with interest on the whole at the rate of twenty per cent. per annum from the date of said certificate, which shall be received and held by said treasurer as the property of the purchaser aforesaid ; and the treasurer shall be held to pay it to the said purchaser, his heirs, or assigns, on demand ; and if not paid when demanded, the purchaser may sue for and recover it in any court of competent jurisdiction with costs and interest at the rate of twenty per cent. from and after such demand. The sureties of the treasurer shall be liable to pay the same on the failure of said treasurer so to pay. And in default of payment by either the town or plantation shall pay the same with costs and interest as aforesaid. Ib. § 171.

8. In case no person having legal authority so to do redeems the same within the time aforesaid by paying the full amount required by this chapter, said treasurer shall deliver to the purchaser the deed or deeds so lodged with him by the collector ; and if he wilfully refuses to deliver any such deed to such purchaser, on demand after the expiration of the said term of two years and forfeiture of the land as aforesaid, he shall forfeit and pay to said purchaser the full and just value of the property so to be conveyed, to be recovered in an action of debt in any court of competent jurisdiction, with cost and interest as in other cases ; the sureties of said treasurer shall make good the payment here required in default of payment by the principal ; and on the

failure of payment by both, the town shall be liable. Ib. § 172.

9. The treasurer's receipt or certificate of payment of a sufficient sum to redeem any lands taxed as aforesaid, shall be legal evidence of such payment and redemption. Ib. § 177.

10. In any trial at law or in equity involving the validity of any sale of real estate for non-payment of taxes, it shall be sufficient for the party claiming under it, to produce in evidence the collector's deed duly executed and recorded, the assessments signed by the assessors, the warrants to the collector, and to prove that such collector complied with the requisitions of law as to advertising and selling such real estate; but no person shall be entitled to commence, maintain or defend any action or suit at law or equity, on any ground involving the validity of any such sale, until the amount of all taxes, charges and interest, as aforesaid, and all costs of suit shall have been paid or tendered by the party desiring to contest the validity of such sale, or by some person under whom he claims. Ib. § 174.

11. The copy of the notice of sale and the certificates thereon, deposited with the town clerk, as required in section one hundred and sixty-seven; or if they are lost or destroyed, an attested transcript of the town clerk's record thereof, shall be conclusive evidence that such notice was given as is required by this chapter in the trial of all issues, in which the collector who made the sale is not personally interested. Ib. § 175.

CHAPTER XLIV.

REPORT OF TAX CASE, GREENE vs. LUNT, AND DECISION OF SUPREME JUDICIAL COURT THEREIN.

For the convenience of the profession and town officers as a guide to all the general requisites for making up a report of a tax case, (where lands of resident owners are sold,) and the records of towns, as evidence of the prerequisites of a tax title, the compiler inserts in this work a complete report of the case, *Greene v. Lunt*, 58 Me., with the decision of the Supreme Judicial Court, which he hopes will be acceptable, it being the only case in which a tax title has been held legal in the state.

SUPREME JUDICIAL COURT.

Oxford, ss—September Term, 1869.

Jonas Greene vs. Geo. W. Lunt.

This is an action of Ejectment.

The writ, pleadings and specifications are to be copied and made a part of the case. The demandant claims title to the lands named in his writ by virtue of a sale of the same for non-payment of taxes assessed upon the same. To support his action the demandant introduced the clerk's records of the town of Peru, which were authenticated, and from which the following extracts are made in support of his title derived under the assessment of the year 1862, and such extracts are to make a part of the case :

When the tenant offered his pleadings in the case the demandant objected to the receipt of the same, and that the tenant was not entitled to set up any defence to the demandant's claim until he had paid or tendered the amount of all taxes and charges for which the demanded premises had been sold with the interest thereon, but the judge presiding overruled the objection and permitted the tenant to go into his defence, to which permission, ruling and overruling the demandant, excepts and prays that his exceptions may be allowed.

By BOLSTER & WRIGHT, and D. HAMMONS.

Duly filed and allowed :

JOHN APPLETON.

WARRANT FOR MEETING, MARCH 3, 1862.

To Otis Wyman, Constable of Peru, in the County of Oxford.

GREETING :

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of the said town of Peru, qualified by law to vote in town affairs, to assemble at the meeting-house in said town on the third day of March next at nine o'clock in the forenoon, to act on the following articles, to wit : First, to choose a moderator to preside in said meeting. Second, to choose all necessary town officers for the year ensuing. Third, to see if the town will grant and raise such sums of money as may be necessary for the maintenance and support of schools, and the poor, and repair of roads and bridges, and to defray all other town charges for the ensuing year. Fourth, to see if the town will vote and raise money to build the road from Isaac Chase's house to Martin L. Wyman's.

The selectmen give notice that they shall be in session for the purpose of revising and correcting the list of voters at the meeting-house at eight o'clock in the forenoon on the day of said meeting.

Given under our hands this 21st day of Feb. A.D. 1862.

BENJ. LOVEJOY,	} Selectmen
JOHN KNIGHT,	
CHARLES F. DESHON,	
	} of
	} Peru.

A true copy. Attest :

WM. WOODSUM, JR., Town Clerk.

RETURN OF WARRANT FOR MEETING, MARCH 3, 1862.

PERU, March 3, 1862.

Pursuant to the within warrant to me directed, I have notified and warned the inhabitants of said town of Peru, qualified as therein expressed, to assemble at the time and place and for the purposes therein mentioned, by posting up an attested copy of such warrant at Jonas Greene's store and Lyman Bolster's store, being public and conspicuous places in said town, on the 24th day of February, being seven days before said meeting.

OTIS WYMAN, Constable of Peru.

A true copy. Attest :

WM. WOODSUM, JR., Town Clerk.

At a legal meeting of the inhabitants of the town of Peru, qualified to vote in town affairs, holden at the meeting-house in said town, on Monday the third day of March, in the year of our Lord, one thousand eight hundred and sixty-two, the following votes were passed :

ART. 1. Voted and chose by ballot, Samuel Holmes, moderator, to preside in said meeting.

OXFORD, SS.—

March 3, 1862.

Personally appeared Samuel Holmes, and took the oath necessary

to qualify him to discharge the duties of moderator of said meeting according to law.

Before me,

WM. WOODSUM, Jr., Town Clerk.

Voted, and chose by ballot, Wm. Woodsum, Jr., Town Clerk.

OXFORD, ss.—

March 3, 1862.

Personally appeared Wm. Woodsum, Jr., and took the oath necessary to qualify him to discharge the duties of Clerk of the town of Peru for the ensuing year, according to law. Before me,

SAMUEL HOLMES, Moderator.

A true copy of certificate.

Attest:

WM. WOODSUM, Jr., Town Clerk.

Voted, and chose by ballot, John Knight, Jonas Greene and Otis Wyman, Selectmen of town of Peru for the year ensuing.

OXFORD, ss.—

March 3, 1862.

Personally appeared John Knight, Jonas Greene and Otis Wyman, and took the oath necessary to qualify them to discharge the duties of Selectmen of the town of Peru for the year ensuing, according to law. Before me.

Attest:

WM. WOODSUM, Jr., Town Clerk.

Voted and chose by ballot, John Knight, Jonas Greene and Otis Wyman, Assessors for the town of Peru for the year ensuing.

OXFORD, ss.—

March 3, 1862.

Personally appeared Otis Wyman, John Knight and Jonas Greene, and took the oath necessary to qualify them to discharge the duties of Assessors of the town of Peru for the year ensuing, according to law. Before me.

Attest:

WM. WOODSUM, Jr., Town Clerk.

Voted and chose by ballot, William H. Walker, Treasurer of the town of Peru for one year ensuing.

OXFORD, ss.—

March 3, 1862.

Personally appeared William H. Walker, and took the oath necessary to qualify him to discharge the duties of Treasurer of the town of Peru for the year ensuing according to law.

Before me,

Attest:

WM. WOODSUM, Jr., Town Clerk.

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Voted and chose by ballot, Otis Wyman, Collector of taxes for the town of Peru for the year ensuing, who agreed to collect the taxes for two cents on the dollar, and do the town's constable business free of charge.

OXFORD, ss.—

March 3, 1862.

Personally appeared Otis Wyman, and took the oath necessary to qualify him to discharge the duties of Collector of taxes for the town of Peru, for the year ensuing, according to law.

Before me,

Attest:

WM. WOODSUM, Jr., Town Clerk.

Voted, and chose by ballot, Otis Wyman, Constable of the town of Peru for the year ensuing.

OXFORD, ss.—

March 3, 1862.

Personally appeared Otis Wyman, and took the oath necessary to qualify him to discharge the duties of Constable of the town of Peru, for the year ensuing, according to law.

Before me,

Attest :

WM. WOODSUM, Jr., Town Clerk.

Voted to raise six hundred and seventy-five dollars for the support of schools. \$675.

Voted to raise one thousand dollars to defray town charges. \$1000.

Voted to raise three thousand dollars to repair roads and bridges. \$3000.

Voted to give the Selectmen discretionary power to lay out highway money or money from the treasury, on the road from Isaac Chase's house to Martin L. Wyman's.

* * * * *

Voted to instruct the Selectmen to ferret out and prosecute all persons who sell liquors in town unlawfully.

Voted to instruct the Selectmen to hire Seth Babb to manage the town farm for the same pay that he had for the past year.

* * * * *

Voted to adjourn without day.

A true Record. Attest :

WM. WOODSUM, Jr., Town Clerk.

The demandant introduced the record of the inventory and valuation of the estates, real and personal, in the town of Peru for the years 1858-9, and 1860, 1, 2, 3, 4, 5 and 6, which were authenticated and from which the following extracts are made, and to make a part of the case.

To the inhabitants of the town of Peru and persons liable to be assessed therein :

You are hereby notified that the subscribers will be in session at Jonas Greene's store in said town, on Tuesday the first day of April next, at ten o'clock in the forenoon, for the purpose of receiving true and perfect list of the polls, and all the estate, real and personal not by law exempted from taxation which you are possessed of in said town of Peru, on the first day of April next, which lists you are requested to make and bring in.

Peru, March 17, 1862.

JOHN KNIGHT, } Assessors of
JONAS GREENE, } Peru.

A true copy of the Notices as we posted, one at Lyman Bolster's and one at Jonas Greene's store, as the law directs.

Attest:

JOHN KNIGHT, } Assessors
JONAS GREENE, } of
OTIS WYMAN, } Peru.

INVENTORY FOR 1862.

The following pages contain an inventory of polls and estates, real and personal, liable to be taxed in the town of Peru for state, county and town taxes for the year 1862, as it existed on the first day of April of said year, with the appraisal thereof in dollars.

JOHN KNIGHT, } Assessors
JONAS GREENE, } of
OTIS WYMAN, } Peru.

Extract from the aforesaid inventory so far as relates to the estate of Geo. W. Lunt, the defendant, a resident and land-holder in the year 1862, aforesaid.

		Range.....	No. Lots.....	No. Acres.....	Value.....
	LUNT'S LOWER TRACT.				
Lunt, Geo. W.,				3-4	\$350
do.	Second lot from D. L. Conant's land,	3	5	85	150
do.	Half a lot westerly from S. Holmes' farm and adjoining it,	4	2	50	36
do.	Second lot from S. Holmes',	4	3	100	50
do.	One-half island opposite S. Holmes',			15	100
do.	Second lot from J. Lunt's,	6	3	100	70
do.	Part of lot joining Josiah Hall's,	1	5	40	80
do.	Lang farm on the hill, formerly owned by S Roberts,	1	3	75	250
	being part of,	1	4		
do.	A part of E A Poland's farm,	6	5	25	15
do.	A piece of land easterly of Worthley pond, joining W. Harlen's farm,	7	5	8	25
do.	A piece of land between A. J Churchill and J. H. Weymouth, part of,	7	3	27	100
do.	The lot being southerly and joining J. P. Hopkins' and S. R. Newell's wood land,	3	4	60	125
	LUNT'S UPPER TRACT.				
do.	The lot joining W. B. Walton's farm,	1	2	55	175
do.	Part of the two river lots joining N. Walker's and Pet-engill farm,	1	1	100	300
		2	1		
do.	One-half of lot northwesterly of Luther Jackson's farm,	2	2	50	300
do.	The Cyrus Keen farm,	6	2	30	75
do.	A piece of land northwesterly of, and adjoining S. G. Waits' land,	5	3	6	25
do.	The island opposite N. Walker's and above Alden's ferry,			6	50
*	*	*	*	*	*

The foregoing pages contain an inventory and valuation of Polls and Estates, real and personal, liable to be taxed in the town of Peru for state, county and town taxes for the year 1862, as it existed on the first day of April of said year.

JOHN KNIGHT, } Assessors of
JONAS GREENE, } Peru.

The demandant introduced the records of assessments of taxes of the town of Peru, which were authenticated, and from which the following extracts are made and are to make a part of the case.

RECORD OF ASSESSMENT OF HIGHWAY TAX FOR 1862.

Names of persons liable to be taxed in the town of Peru.	No. Polls.	Poll Tax.	Taxes on Personal Estate.	Taxes on Real Estate.	Total amount of Tax.
Lunt, George W.,	1	\$ 1 00	\$ 2 62	\$ 7 00	\$11 32
Record of Assessment of Highway and Money tax and names of persons liable to be taxed in the town of Peru for 1862.					
Lunt, George W.,	1	1 00	2 23	5 95	9 18

* * * * *

	No. Lots.	Range.	No. Acres.	Value.	Highway Tax.	Money Tax.
LUNT'S LOWER TRACT.						
Lunt, Geo. W.	3 3		85	\$ 150	\$ 3 00	\$ 2 55
do.	4 2		50	36	72	61
do.	4 3		100	50	1 00	85
do. One-half of Island.			15	100	2 00	1 70
do.	6 3		100	70	1 40	1 19
do.	1 5		40	50	1 60	1 36
do.	1 3		75	250	5 00	4 25
do.	6 5		25	15	30	25
do.	7 5		8	25	50	42
do.	7 3		27	100	2 00	1 70
do.	3 4		60	125	2 50	2 12
LUNT'S UPPER TRACT.						
do.	1 2		55	175	3 50	2 98
do.	1 1		100	300	6 00	5 10
do.	2 1		50	300	6 00	5 10
do.	6 2		30	75	1 50	1 27
do.	5 3		6	25	50	42
do. Island.			6	50	1 00	85

REMARKS ON THE FOREGOING ASSESSMENTS FOR 1862.

We have assessed on the Polls and Estates of resident proprietors and on the estate of non-resident proprietors in the town of Peru, the sum of three thousand dollars voted by the town, with an overlay not exceeding five per cent, the aforesaid sums to be raised and expended in labor and materials on the highways in said town; the same we have committed to the several Highway Surveyors in due form of law. We have assessed the tax at two cents on the dollar. We have assessed on two hundred and twenty-one polls, at one dollar each, with an inventory of (\$138,323,) one hundred and thirty-eight thousand three hundred and twenty-three dollars.

Peru, April 28th, A.D. 1862.

JOHN KNIGHT, } Assessors
JONAS GREENE, } of
OTIS WYMAN, } Peru.

We have assessed the money tax on the polls and estates of resident inhabitants and on the estate of non-resident proprietors liable to be taxed in the town of Peru for the year 1862, at one cent seven mills on the dollar. Before making the money tax we deducted from

the inventory one thousand five hundred forty-five dollars, it being the town farm and stock, making the inventory stand \$136,778. We assessed on one hundred and ninety-seven polls at one dollar on the poll. We have assessed five hundred and one dollars and fifty-seven cents state tax (\$501.57); also a county tax of three hundred and five dollars and eighty-four cents (305.84) county tax, and one thousand dollars voted by the town last March to defray the town charges, (\$1000.) Also six hundred and seventy-five dollars for the support of schools, (\$675,) with an overlay of forty-one dollars and eighteen cents, (\$41.18,) the same we have committed to the collector for collection with a warrant in due form of law for collecting and paying over to the several treasurers.

Peru, June 11, A D. 1862.

JOHN KNIGHT, } Assessors
JONAS GREENE, } of
OTIS WYMAN, } Peru.

The demandant introduced the warrant to the collector of the town of Peru for the year 1862, dated June 11, 1862, for collecting of state, county and town taxes for said year and the commitment of the tax bills on list of same date which were admitted by defendant to be in due form, properly executed and signed by the three assessors of Peru for the year 1862; from the tax list the following extracts are made and are to make a part of the case; but either party may introduce a copy of the abovenamed warrant as part of the case which need not be printed.

COLLECTOR'S TAX LIST FOR 1862.

Amt. Tax.	\$ 18
Personal.	\$ 23
R. Estate.	\$ 95
Poll Tax.	\$ 1 00
Polls.	1

COLLECTOR'S TAX LIST FOR 1862.—*Resident Land Continued.*

	No. Lots.	Range.	No. Acres.	Value.	Am't Tax.
LUNT'S LOWER TRACT.					
Lunt, Geo. W.	3		85	\$ 150	\$ 2 55
do.	4	2	50	36	61
do.	4	3	100	50	85
do.			15	100	1 70
do.	6	5	100	70	1 19
do.	1	5	40	80	1 36
do.	1	3 }			
do.	1	4 }	75	250	4 25
do.	6	5	25	15	25
do.	7	5	8	25	42
do.	7	3	27	100	1 70
do.	3	4	60	125	2 12
LUNT'S UPPER TRACT.					
do.	1	2	55	175	2 98
do.	1	1 }			
do.	2	1 }	100	300	5 10
do.	2	2	50	300	5 10
do.	6	2	30	75	1 27
do.	5	3	6	25	42
do.			6	50	85
Island.					

It is admitted by defendant that the aforesaid warrant to the collector with the commitment of the lists of taxes assessed for year 1862, were duly recorded in the record of assessments.

The demandant introduced the copy of the collector's notice of sale and his certificates thereon, that he had given notice of the intended sale as required by law, which was duly lodged with the town clerk of Peru, which copy and certificate were duly recorded by said clerk, which copy and the certificates thereon are copied and marked "A," and made a part of the case, and is hereto annexed.

A.

NOTICE.

The resident proprietors of the following tracts of land or real estates in the town of Peru in the county of Oxford, are notified that the same are taxed in the tax list committed to the subscriber, the collector of taxes for the said town of Peru, for the year one thousand eight hundred and sixty-two, that the taxes assessed on the same remain unpaid, that nine months from the date of the assessment has expired.

Names of Owners.	ESTATE TAXED.	No. Lot.	Range.	No Acres.	Amt. Tax unpaid.
Lunt, Geo. W.	The stand where he resides,	3	3	3-4	5 95
do.	Lunt's Lower Tract,	4	3	85	2 55
do.	" " "	3	3	50	61
do.	" " "	4	3	100	85
do.	One-half of Island in front of S. Holmes',			15	1 70
do.	Lunt's Lower Tract,	6	3	100	1 15
do.	" " "	1	5	40	1 36
do.	" " "	1	3	75	4 25
do.	" " "	1	4		
do.	" " "	6	5	25	25
do.	" " " East of pond.	7	5	8	42
do.	" " "	7	3	27	1 70
do.	" " "	3	4	60	2 12
do.	Lunt's Upper Tract,	1	1	100	5 10
do.	" " "	2	1		
do.	" " "	2	2	50	5 10
do.	" " "	1	2	55	2 98
do.	" " "	6	2	30	1 27
do.	" " "	5	3	6	42
do.	Island above Alden's Ferry,	5	3	6	85

And if no person shall appear to discharge said tax on or before the twelfth day of March next, at one o'clock in the afternoon, I shall proceed to sell at Jonas Greene's store in said town of Peru, by public auction to the highest bidder, so much of said respective tracts or parcels of real estate or land as shall be sufficient to discharge said taxes and all necessary charges.

Peru, March 28, 1864.

OTIS WYMAN, Collector of taxes for said town of Peru.

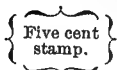
A true copy. Attest :

OTIS WYMAN, Collector of taxes for said town of Peru.

I hereby certify that the foregoing is a true copy of the notice of the aforesaid intended sale, and that I have given notice of said intended sale as required by law.

Peru, March 28, 1864.

OTIS WYMAN, Collector of taxes for said town of Peru.



Received and recorded, March 28, 1864.

WM. WOODSUM, Jr., Town Clerk.

The demandant introduced the collector's certificate lodged with the town treasurer, and made under oath, which was duly authenticated, which is marked "B," and herein copied and to make part of the case.

B.

To the town Treasurer of the Town of Peru, in the County of Oxford, and State of Maine.

This is to certify that I, Otis Wyman, collector of taxes for the town of Peru, aforesaid, for the year 1862, pursuant to the law of said State, I have sold this twelfth day of May, A.D. 1864, the real estate of George W. Lunt, a resident owner or proprietor, for payment of taxes at said time remaining due and unpaid, and in the schedule following is set forth the amount of land sold, being the same on which the taxes were unpaid, the name of the owner of said lots or parcels of lands, the amount of taxes for which each was sold and the legal cost and charges of said sale and the purchaser of each parcel, and I have executed deeds of the several parcels to the persons entitled thereto, and on this sixteenth day of May, A.D. 1864, I lodged this certificate and said deeds with you to be disposed of as the law requires.

Name of Owner.	SCHEDULE. QUANTITY OF LAND SOLD.	Amount Tax due and unpaid.	Cost and Charges.	Name of Purchaser.
Lunt, Geo. W.	3-4 of an acre.	\$5.95	\$0.66	Jonas Greene.
do.	85 acres.	2.55	00	do.
do.	50 "	61	00	do.
do.	100 "	85	66	do.
do.	15 "	1.70	66	do.
do.	100 "	1.15	66	do.
do.	40 "	1.36	66	do.
do.	75 "	4.25	00	do.
do.	25 "	25	66	do.
do.	8 "	42	66	do.
do.	27 "	1.70	66	do.
do.	60 "	2.12	66	do.
do.	55 "	2.98	66	do.
do.	100 "	5.10	66	do.
do.	50 "	5.10	66	do.
do.	30 "	1.27	66	do.
do.	6 "	42	66	do.
do.	6 "	83	00	do.

In witness of all which I herunto subscribe my name this sixteenth day of May, A.D. 1864.



OTIS WYMAN,

Collector of the town of Peru for 1862.

OXFORD, ss.—

May 16, 1864.

Personally appeared the above named Otis Wyman, and made oath that the above certificate by him subscribed is true.

Before me,

SAMUEL HOLMES, Justice of the Peace.

May 16, 1864. Recorded and lodged with me,

WM. H. WALKER, Town Treasurer of Peru.

The demandant introduced the collector's return made to the town clerk with a particular statement of his doings, etc., which was duly authenticated and is herein copied and made a part of the case.

To Wm. Woodsum, Jr. Town Clerk of the town of Peru, in the county of Oxford, and state of Maine :

Pursuant to the provisions of law, I caused the taxes assessed on the real estate of resident owners or proprietors in the said town of Peru, for the year 1862, and that remained unpaid for the term of nine months from the date of the assessment and in the list of assessments by the assessors of said town, committed to me on the eleventh day of June, A.D. 1862, together with a warrant under their hands for the collection of the same in the form by law prescribed, and said taxes remaining unpaid as aforesaid, and whereas no person appeared to discharge the same, although after the expiration of said term of nine months, to wit,—on the twenty-eighth (28) day of March, A.D. 1864, I gave notice of the non-payment of said taxes, and of my intention to sell so much of said real estate as would be necessary for the payment of said taxes, and all charges by posting notices thereof in the same manner and at the same places in said town of Peru, that warrants for town-meetings are required to be posted in said town six weeks before the day of sale, designating in said notices the name of the owner and a certain and plain description of said real estate, the right lot and range, and the number of acres and the amount of taxes due and unpaid on each parcel of real estate; and I also duly lodged with the town clerk of said town of Peru, a copy of such notice with my certificate thereon, that I had given notice of the intended sale as required by law, and after the said real estate was so advertised for sale as aforesaid, and at least ten days before the day of sale, I notified the owner and occupant thereof of the time and place of sale, by delivering to the owner and occupant of the real estate so advertised, in person, a written notice signed by me, therein stating the time and place of sale and the amount of taxes due and unpaid; and I also, in said notice so posted as aforesaid, gave notice that if no

person appeared to discharge said taxes and cost of advertising on or before the twelfth day of May, A.D. 1864, at one of the clock in the afternoon (being the time of said sale,) I should proceed to sell at Jonas Greene's store in said town of Peru (being the place of sale,) at public auction to the highest bidder, so much of said real estate as would be necessary to pay the taxes then due and necessary intervening charges, and afterwards, in pursuance of said notice, to wit,—on the twelfth day of May, A.D. 1864, at Jonas Greene's store in said town of Peru, being the day and place of sale, at one of the clock in the afternoon, being the hour of sale, I proceeded to sell according to the tenor of said notices the estate upon which the taxes so assessed remained unpaid, and it became necessary to sell the whole amount of the real estate so assessed and advertised, as no person would pay the taxes and legal charges for a less amount of said real estate, and in the schedule following is set forth each parcel of the estate so offered for sale, and the owner or occupant thereof, the amount of the taxes and costs and charges for which it was sold, the quantity sold and the name of the purchaser; and I have made and executed deeds of the several parcels to the purchaser, the person entitled thereto, and within four days after the day of sale, to wit,—on the sixteenth day of May, A.D. 1864, I lodged with the treasurer of said town of Peru, said deeds to be disposed of as the law requires; and also on the same day, being within four days after the day of said sale, I lodged with said treasurer my certificate under oath, designating the quantity of land sold, the name of the owner of each parcel and the name of the purchaser, what part of the amount for which each parcel was sold, was tax, and what was cost and charges, and also a deed of each parcel running to the purchaser.

Name of Owner and Occupant.	ESTATE OFFERED FOR SALE AND SOLD.	SCHEDULE.			Name of Purchaser.
		Amount of Tax, Cost and Charges.	Quantity of land sold, No. acres.		
Geo. W. Lunt	The stand where he now resides,	\$6 61	3-4	Jonas Greene.	
do.	Lot 3 Range 3 Lunt's Lower Tract,	3.31	85	do.	
do.	" 4 " 2 " " "	1.27	50	do.	
do.	" 4 " 3 " " "	1.51	100	do.	
do.	1/2 of island " " "	2.36	15	do.	
do.	Lot 6 Range 3 " " "	1.81	100	do.	
do.	" 1 " 5 " " "	2.02	40	do.	
do.	" 1 " 3 } " " "	4.91	75	do.	
do.	" 1 " 4 } " " "	4.91	75	do.	
do.	" 6 " 5 " " "	11	25	do.	
do.	" 7 " 3 " " "	2.36	27	do.	
do.	" 7 " 5 " " "	1.08	11	do.	
do.	" 3 " 4 " " "	2.78	60	do.	
do.	" 1 " 2 Lunt's Upper Tract,	3.64	53	do.	
do.	" 1 " 1 " " "	5.76	100	do.	
do.	" 2 " 1 } " " "	5.76	50	do.	
do.	" 2 " 2 " " "	1.93	30	do.	
do.	" 6 " 2 " " "	1.08	6	do.	
do.	" 5 " 3 " " "	1.51	8	do.	
do.	Island above Alden's Ferry,				

In witness of all which I have hereunto subscribed my name this 23rd day of May, A.D. 1864.

OTIS WYMAN,

Collector of taxes for the town of Peru for the year 1862.

Received May 24, 1864, and recorded on Peru records.

Attest:

WM. WOODSUM, Jr., Town Clerk.

The collector's deed of each parcel of the aforesaid pieces of land duly executed and recorded and stamped with a five cent stamp, were produced in evidence by demandant and the delivery of said deeds to demandant by treasurer of said town after the expiration of two years from the time the collector's certificate and deeds were lodged with the town treasurer, was proved, said deeds are alike in form, except in description of premises, a copy of one of which is hereunto annexed is made a part of the case as a specimen of the whole. The description of the premises in the deeds are as follows, and are to make a part of the case, the same as if fully copied. The first piece named in the writ is described as follows: The stand now occupied by said Lunt, situated at west Peru, in said Peru, being three-fourths of an acre and house. The description in deed of second piece of land named in writ is as follows: The island opposite Gilbert Eustis' farm and the first island above Alden's ferry containing six acres. The description in deed of third piece of land named in writ as follows: A part of lots numbered one in the first and lots numbered two in the first range of lots containing one hundred acres. The description on deed of fourth piece of land named in writ is as follows: A part of lot numbered six in the second range of lots containing thirty acres, known as the Cyrus Keen place, so called. The description in deed of fifth piece of land named in writ is as follows: A part of lot numbered five in the third range of lots containing six acres. The description in deed of sixth piece of land named in writ is as follows: Being lot numbered two in the second range of lots. The description in deed of seventh piece of land named in writ is as follows: Being a part of lot numbered one in the second range in Lunt's upper tract. The description in deed of eighth piece of land named in writ is as follows: Being lot numbered four in the third range in Lunt's lower tract containing one hundred acres. The description in deed of ninth piece of land named in writ is as follows: Being lot numbered six in the third range of lots containing one hundred acres in Lunt's lower tract. The description in deed of tenth piece of land named in writ is as follows: Being lot numbered three in third range and second lot from D. S. Conant's land containing eighty-five acres. The description in deed of eleventh piece of land named in writ is as follows: Being a part of lot numbered seven in the third range of lots containing twenty-seven acres and adjoining A. J. Churchell's land or farm. The description in deed of twelfth

piece of land named in writ is as follows: Being a part of lots numbered one in the third lots, numbered one in the fourth range of lots containing seventy-five acres. The description in deed of thirteenth piece of land named in writ is as follows: It being one-half of the island in front and opposite of S. Holmes', containing fifteen acres. The description in deed of fourteenth piece of land named in writ is as follows: Being a part of lot numbered six in the fifth range of lots containing twenty-five acres and described as part of the E. A. Poland farm by the assessors of 1862, in their inventory of said year. The description in deed of fifteenth piece of land named in writ is as follows: It being a part of lot numbered one in the fifth range of lots in Lunt's lower tract in the town of Peru containing forty acres. The description in deed of sixteenth piece of land named in writ is as follows: It being lot numbered three in the fourth range containing sixty acres. The description in deed of seventeenth piece of land named in writ is as follows: It being lot numbered four in the second range of lots and being second lot from S. Holmes' land containing fifty acres.

Stamp.

Specimen Deed of 1862.

To all to whom these presents shall come :

I, Otis Wyman, collector of taxes for the town of Peru, in the county of Oxford, and state of Maine, for the year 1862, legally chosen and sworn, send greeting :

Whereas, the assessors of the town of Peru, aforesaid, have assessed George W. Lunt in the sum of eighty-five cents, the island above Alden's ferry, a resident proprietor of land in said Peru, in the list of assessments they have committed to me to collect, and whereas no person has appeared to discharge said tax, although I have advertised the same by posting notices of my intention to sell so much of said real estate as would be necessary to discharge said tax and all intervening charges, at three public places in said town where warrants for town-meetings are required to be posted six weeks before the day of sale; and at least ten days before the sale I delivered to the owner a written notice, stating the time and place of sale and the amount of tax due. Therefore, know ye, that I, Otis Wyman, collector of taxes as aforesaid, in consideration of the sum of one dollar and fifty-one cents to me paid by Jonas Greene of Peru, I do hereby give, grant, sell and convey to the said Jonas Greene, his heirs and assigns, the following described real estate situated in the town of Peru in Lunt's upper tract, it being the island opposite Gilbert Eustis' farm and the first island above Alden's ferry containing six acres. The same having been struck off to the said Jonas Greene; he being the highest bidder therefor, at a public auction legally notified and holden at the store of Jonas Greene in said Peru, on the twelfth day of May, 1864. To have and to hold the same to the

said Jonas Greene and his heirs and assigns forever, to his and their use, subject, however, to the right of redemption of the owner thereof, or his heirs or assigns at any time within the time specified by law; and I do covenant with the said Jonas Greene, and his heirs and assigns, that I gave notice of the intended sale of said land according to law, and that I have observed the directions of the law in all respects in the premises. In witness whereof, I have hereunto set my hand and seal this sixteenth day of May, in the year of our Lord eighteen hundred and sixty-four.

OTIS WYMAN. [L.S.]

Signed, sealed, and delivered in presence of
SAMUEL HOLMES.

OXFORD, SS.—

May 16, 1864.

Personally appeared the above named Otis Wyman, and acknowledged the above instrument to be his free act and deed.

Before me,

SAMUEL HOLMES, Justice of the Peace.

STATE OF MAINE.

COUNTY OF OXFORD, SS.—

To the Sheriff of any County in our said State or either of his Deputies.

GREETING:

We command you, to attach the goods or estate of George W. Lunt, of Peru, in our said county of Oxford, yeoman, to the value of five thousand dollars; and summon the said defendant (if he may be found in your precinct,) to appear before our Justices of our Supreme Judicial Court, next to be holden at Paris, within and for our said county of Oxford, on the third Tuesday of September, A.D. 1867, then and there in our said Court to answer unto Jonas Greene of said Peru, yeoman.

In a plea of land, wherein the said Jonas Greene demands of said George W. Lunt, seizin and possession of certain messuages or tracts of land, to wit,—the stand now occupied by said Lunt, situate at West Peru, in said Peru; said stand consists of a house and three-quarters of an acre of land adjoining John E. Jenne's stand. Also the island above Brown's ferry in the Androscoggin river in said Peru, known as the Lunt Island in Lunt's upper tract, the same being about six acres. Also the southwest half of lots numbered one and two in range one in said tract, containing one hundred acres. Also a piece of land in said tract of about thirty acres of lot numbered six in second range, known as the Keene place in said Peru. Also a piece of land of six acres in lot numbered five in third range of lots in said Peru, said piece of land being the southeast corner of said last named lot, and situated in said upper tract. Also lot of land numbered two in second range in said tract in Peru, aforesaid, containing one hundred acres. Also lot numbered one in

second range in said tract, in said Peru, containing about one hundred acres. Also lot of land numbered four in range three in Lunt's lower tract, in said Peru, containing one hundred acres, and being the second lot of land from Samuel Holmes' farm. Also a lot of land numbered six in third range, known as the Starbird lot in said lower tract, in said Peru, containing one hundred acres. Also lot numbered three in range three, in said tract last named, containing eighty-five acres. Also lot of land numbered seven in range three in said tract, in said Peru, adjoining Andrew J. Churchill's farm. Also lots numbered one in the third and fourth ranges in said lower tract, in said Peru, known as the Larry hill farm, containing seventy-five acres. Also one undivided half of the island in the Androscoggin river, in said Peru, and opposite of Samuel Holmes' farm, and containing about fifteen acres. Also lots numbered six and one in the fifth range of lots in said Peru, in said lower tract. Also lot numbered three in the fourth range, and lots numbered four in the second range, and lot numbered seven in the eighth range in said tract last named, in Peru, aforesaid. Whereupon the plaintiff says that in a time of peace, within twenty years now last past, he was seized of the demanded premises in his demisne as of fee, taking the rents and profits thereof, to the value of one hundred dollars by the year, and ought now to be in quiet possession of the same; nevertheless, the said George W. Lunt, since that time, hath unlawfully entered upon the premises and ejected the plaintiff therefrom and still holds him out.

To the damage of the said plaintiff (as he says,) the sum of five thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this Writ with your doings therein.

Witness—JOHN APPLETON, Chief Justice of said Court, at Paris, this second day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

WILLIAM K. KIMBALL, Clerk.

STATE OF MAINE.

OXFORD, SS.—

SUPREME JUDICIAL COURT.

SEPTEMBER TERM, 1868.

JONAS GREENE vs. GEORGE W. LUNT.

The defendant in the above entitled cause comes and declares that he believes there is a good defense to all, or a part of the plaintiff's claim, and that he intends to make it.

By ALVAH BLACK, his Attorney.

And for plea, the said defendant comes and defends, &c., when and where, &c., and says that he never disseized the plaintiff in

manner and form as the plaintiff has declared against him; and of this he puts himself upon the country.

By ALVAH BLACK, his Attorney.

And for a brief specification of the grounds of his defense, and also for a brief statement of special matter of defense to be used under the general issue above pleaded, the said defendant further says:

The land demanded by the plaintiff in his writ and declaration is not and was not at the time of the commencement of this action the soil and freehold of the plaintiff, but was at the time of the commencement of said action, for a long time had been, ever since has been, and now is the soil and freehold of the defendant.

The plaintiff never was seized of said lands or any of them, and had no right of entry into them at the time of the commencement of this action, and has not now.

The plaintiff had no right, title or interest in said lands at the time his writ was sued out and has not now.

If the plaintiff claims by a tax title that defendant says that at the time when said tax or taxes were assessed through which plaintiff derives his title, there were no legal assessors in the town of Peru or any other town where said taxes were assessed; that said taxes were not legally raised or assessed, and that the proceedings of the Collector or Collectors, and Treasurer or Treasurers, in the return of the taxes, advertising and sale of said lands were illegal, null and void, and no title passed by such sale.

Plaintiff acquired and could acquire no title by such sale.

Defendant denies every material allegation in plaintiff's writ and will require specific proof of the same.

By ALVAH BLACK, his Attorney.

DECISION IN GREENE vs. LUNT.

OXFORD Co.—

JONAS GREENE vs. GEORGE W. LUNT.

DANFORTH J. This is an action to recover possession of eighteen different parcels of land claimed by virtue of a sale for taxes for the years 1862, 1863, and 1864. The proceedings in assessing the taxes and making the sales, are substantially alike in each year, and therefore it will be necessary to consider only those of the first. Many objections have been raised to the election, qualification and proceedings of the officers who made the assessments, as well as to the proceedings of the collector in making the sales. It is true that in these respects, as the plaintiff's title is founded solely upon the provisions of the statute, such provisions must be strictly complied with, without considering each objection, it is sufficient to say, that after a careful comparison of the

proceedings of the town and its officers, with the several provisions of the statute we find that the officers were duly elected and qualified, and that the certificate of the oath taken by them is sufficient and in conformity with the provisions of the R. S. ch. 1, § 6. Nor do we find any defect in the assessment, or in the proceedings of the collector in making the sales, certainly none not remedied by R. S. ch. 6, § 98, unless it be in the description of the land taxed and sold. The indefinite description of the several parcels assessed, is the only serious objection to the plaintiff's title. He will then, be entitled to a judgment for such lots as are sufficiently described, while, as to the others he must fail.

The R. S. ch. 6, § 150, provides that "For all taxes legally assessed on real estate belonging to resident proprietors * * * a lien is hereby created, which shall continue in full force until the payment thereof." By the same section it is further provided that the collector may give notice "of his intention to sell so much of *such real estate* * * as is necessary to pay *said tax* and all charges." By section 152 of the same chapter it is enacted that, "when no person appears to discharge the taxes duly assessed on any real estate of resident owners with costs * * * the collector shall proceed to sell at public auction to the highest bidder, so much of *such real estate* as is necessary to pay the *tax then due*." The collector has no authority whatever for selling land of resident proprietors for taxes except as given in those statutes. He can sell such and only such as the law gives a lien upon, and the lien attaches to such and only such as are legally assessed, and to the specific and definite parcels upon which the tax is laid. If there is no definite parcel taxed there can be no lien; and if no lien there can be no legal sale. Hence the inference is irresistible that, in the assessment which establishes the lien, and which is the foundation on which rests all the subsequent proceedings, the lots taxed must be definitely and distinctly described. This view is confirmed, if confirmation were necessary, by the provisions in section 150 in relation to the notice to be given by the collector which is as follows: "designating the name of the owner, if known, the right, lot and range, the number of acres as near as may be, * * * and such other short description as is necessary to render it certain and plain." The collector must obtain his information from the assessment. He has no authority to add to, or take from it; nor can the assessors after the completion of the tax, add to the description so as to make that certain which was before uncertain.

The assessment must be complete in and of itself as much as a deed or contract. Parol proof may be resorted to for the purpose

of applying the terms of the description to the face of the earth but no further. It cannot supply any deficiency in the butts or bounds. These must be ascertained from what is written and from that alone. We may suppose, as contended in the argument, that the assessors intended to assess the lot, or portion of the lot owned by the person taxed, or we may learn that fact from the officers themselves. But this is not a question of intention, but one of fact. What did they do? What is the specific lot upon which the tax is made? Until we can answer these questions, and from the record, we are utterly unable to ascertain the lot to which the lien attaches and the one to be sold. *Blackwell on Tax Titles*, 392, 123, and 124.

Applying these principles to the case at bar we find the description in the assessment of many of the lots sold defective and insufficient. The first parcel claimed in the writ has no description whatever. The thirteenth, though sufficiently set out in the writ, in the assessment is described as one half Island; whether an undivided half does not appear, or if not undivided no means are furnished by which we can ascertain which half is intended. The third, fifth, sixth, seventh, eleventh, fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth parcels declared for are described as parts of lots or parcels, or so many acres of a certain lot. Such a description, however it may be in a deed, when the grantee makes his own bargain and can enter into such a contract as he pleases, is plainly insufficient in a tax title, when the lien is fixed by the assessment and nothing is left to the discretion, or election of the collector or purchaser, as to the location of the particular lot sold or the specific acres in the lot to which the sale shall attach. Under such a description the person assessed could not tell whether it was his property or that of a stranger, which was taxed, nor could the purchaser have sufficient knowledge of the identity of the land to enable him to bid intelligently. *Blackwell on Tax Titles* 124, and cases cited; *Adams v. Larrabee*, 46 Me. 516.

Therefore as to these lots the action must fail. But as to the remaining lots it is different. The second declared for, is described somewhat differently in the writ and assessment, yet the description in each is definite and the two have so much in common as to satisfactorily lead to the conclusion that both refer to the same tract.

The fourth piece is described as the Cyrus Keene place in lot six, range two; the eighth as the whole of lot four, range three, Lunt's lower tract; the ninth as lot six, range three; the tenth as lot three, range three; and the twelfth as the Larry farm on the

hill, being parts of lots one in the third and fourth ranges. These lots are sufficiently described to enable any one to identify them by having the knowledge necessary to apply the description to the face of the earth.

The plaintiff must therefore have judgment for the second, fourth, eighth, ninth, tenth and twelfth parcels demanded in his writ and described as above, and for the remainder judgment for defendant. Judges concurring, Walton, Appleton, Cutting, Kent, and Barrows.

CHAPTER XLV.

COLLECTION OF TAXES IN INCORPORATED PLACES ON LANDS OF NON-RESIDENT OWNERS.

1. At the expiration of nine months and not exceeding twelve months from the date of the commitment of his bills, the collector shall make an accurate copy of so much thereof as relates to the taxes assessed on the real estate of non-resident owners, whether described as such in his bills by name or as owners unknown, which remain unpaid at that date, and certify thereon that such taxes so remain unpaid, and deliver it to the treasurer of his town. The treasurer shall forthwith record the list and certificate in a book kept by him for that purpose; said record shall be sufficient evidence of the facts therein stated. The list so returned, adding thereto the number and range of the lots, rights and divisions, the valuation or other short description taken from the inventory, together with the valuation therein, which will serve to identify the estate, he shall cause to be published in some newspaper, if any, published in the county where such real estate lies, three weeks successively; if no newspaper is published in such county; said list shall be published in like manner in the state paper; in either case such publication shall be within three

months after the date of the collector's return ; and he shall in the advertisement so published, state the name of the town, and if it has been changed, for the whole or a part of the territory by the legislature, within three years, the present and former name shall both be stated, and give notice that if the taxes, interest and charges are not paid within eighteen months from the date of the commitment, so much of the estate as will be sufficient to pay the amount due therefor, with interest and charges, will be sold without further notice, at public auction, at a place, and at a day and hour therein named, after the expiration of the eighteen months and not exceeding twenty months from the date of the commitment. The date of the commitment, the name of the collector, and the date of his return shall be stated in the advertisement. R. S. ch. 6, § 159.

2. At the time and place appointed for the sale, the treasurer shall offer for sale so much of the estate taxed, as shall be required to pay the tax with interest at the rate of twenty-five per cent. per annum, commencing at the expiration of twelve months from the date of the commitment, and the costs of advertising ascertained by adding to the sum paid the printer fifty per cent. thereof, and dividing the aggregate by the number of taxes advertised, the amount so obtained to be charged to each. If the bidding is for less than the whole, it shall be for a fractional part of the estate, and the bidder who will pay the sum due for the least fractional part shall be the purchaser. The treasurer shall, upon payment of the sum due by the bidder, by his deed, under his hand and seal of office, duly executed and acknowledged, in the name of the town, convey to the purchaser the estate so sold. He shall not deliver the deeds to the grantees, but put them on file in his office, to be delivered at the expiration of one year from the day of sale, in case the owner shall not within that time redeem his estate from the sale, by the payment of the taxes, interest at the rate aforesaid to the time of the redemption, and costs as above provided, with sixty-seven cents for the deed and certificate of acknowledgment. If the deed is recorded within thirteen months after the day of sale, no intervening attachment

or conveyance shall affect the title. If so paid, he shall give the owner a certificate thereof, and cancel the deed, and pay over to the grantee, on demand, the amount so received for him. If not so paid, he shall deliver to the grantee his deed, on payment of the fees aforesaid, for the deed and acknowledgment, and thirty cents more for receiving and paying out the proceeds of the sale. Within four days after the sale, he shall make a record of his doings in his book mentioned in the first preceding section, in advertising and subsequent proceedings, and selling and conveying the estates so returned. For his fidelity in discharging his duties herein required, the town shall be responsible, and shall have a remedy in case of default on his bond. He may, if necessary to complete the sales, adjourn the auction from day to day. Ib. § 160.

3. The person interested in the estate, by purchase at the sale, may pay any tax assessed on the same estate, previously or subsequently to that so advertised, and for which the estate remains liable, and on filing with the treasurer the receipt of the officer to whom it was paid, the amount so paid shall be added to that for which the estate was liable, and shall be paid by the owner redeeming the estate, with interest at the same rate as on the other sums. After the deed is so delivered, the owner shall have six months within which to redeem his estate, by paying to the purchaser the sum by him so paid, with interest at the rate of twenty-five per cent. per annum. Ib. § 161.

4. In any trial involving the validity of any such sale, it shall be sufficient for the party claiming under it to produce the treasurer's deed, duly executed and recorded, the assessments signed by the assessors, their warrants to the collector, and to show that the taxes were advertised according to law; but no person shall be entitled to commence, maintain or defend any action or suit in law or equity, on any ground involving the validity of any such sale, until the amount of all the taxes, charges and interest, as aforesaid and all costs of suits shall have been paid or tendered by the party desiring to contest the validity of such sale, or by some person under whom he claims. Ib. § 162.

5. Any owner of the real estate so taxed, having paid the taxes, charges and interest as aforesaid, may at any time within one year after making such payment, commence a suit against the town to recover the amount paid, and if on trial it appears that the money raised was for an unlawful purpose, he shall have judgment for the amount so paid. If not commenced within the year, the claim shall be forever barred. The suit may be in the supreme judicial court, and the plaintiff recovering judgment therein shall have full costs, although the amount of damages be less than twenty dollars. Ib. § 163.

6. The municipal officers of the town may employ one of their own number, or some other person, to attend to the sale of any real estate to be sold for taxes, in which their town is interested, and bid therefor a sum sufficient to pay the amount due and charges, in behalf of the town, and the deed shall be made to it. Ib. § 164.

7. In all cases where real estate has been sold for state, county or town taxes, the owner may pay the sums necessary to redeem the same, within the time allowed by law, into the treasury of the state, county or town to which the tax is to be paid, and such payment seasonably made shall redeem the estate. The treasurer shall pay the amount so received by him to the person entitled, according to the records and documents in his office. Ib. § 165.

FORM OF COLLECTOR'S CERTIFICATE TO TREASURER.

Copy of so much of collector's bills for 187—, as relates to taxes assessed on real estate of non-resident owners which now remain unpaid.

Names of non-resident owners, or unknown.	DESCRIPTION OF REAL ESTATE.	No. of lot.		No. of range.		No. of Acres.		Value.	Tax on Real Estate.
		No.	of	No.	of	No.	of		
Abbot, John	Cyrus Keen farm,	6	2	30	200			\$200	\$ 2 00
Bird, Enos		10	8	100	00			00	1 00

To A. B., treasurer of the town of ———. I certify that the foregoing is an accurate copy of so much of the bills committed to me as collector of said town, as relates to the taxes assessed on the

real estate of non-resident owners in said town for the year 187—, that remain unpaid at this date, that the bills were committed to me on the ——— day of ———, 187—, and that the said taxes are returned by me as unpaid.

(Name of town.) (Date.)

A. B., collector of taxes of the town of ———, for the year 187—.

If the taxes are committed to a constable, the certificate must conform thereto.

The above certificate to be recorded in a book by the treasurer, kept for that purpose.

FORM OF TREASURER'S ADVERTISEMENT.

NOTICE.

Non-resident taxes in the town of ———, in the county of ———, for the year 187—.

The name of the town was formerly ———, (to be stated if it has been changed within three years.) The following list of taxes on real estate of non-resident owners in the town of ———, for the year 187—, in bills committed to A. B., collector (or constable) of said town, on the ——— day of ———, 187—, has been returned by him to me as remaining unpaid on the ——— day of ———, 187—, by his certificate of that date, and now remain unpaid; and notice is hereby given that if the said taxes, and interest and charges are not paid in the treasury of the said town, within eighteen months from the date of the commitment of the said bills, so much of the real estate taxed as will be sufficient to pay the amount due therefor, including interest and charges, will without further notice, be sold at public auction at ———, in said town, on the ——— day of ———, 187—, at ——— o'clock in the ——— noon.

Names of non-resident owners, or unknown.	DESCRIPTION OF REAL ESTATE.	No. of lot.	No. of range.	No. of Acres.	Value.	Tax on Real Estate.
		No.	No.	No.		
Abbot, John Reed, Enos	Cyrus Keen farm,	6	2	30	\$200	\$ 2 00
		10	8	100	100	1 00
C. D., Treasurer of the town of ———.						

The treasurer should preserve the newspapers in which the advertisement is published.

If the taxes on any lot or parcel are paid after the return of the list by collector and before advertised by the treasurer, those that are thus paid need not be inserted in the treasurer's advertisement, only those that are unpaid should be inserted.

TREASURER'S NON-RESIDENT TAX DEED.

Whereas, the assessors of the town of ———, in the county of ———, and state of Maine, for the year eighteen hundred and ———, have assessed a certain parcel of real estate in said town, described as follows :

In the sum of ——— dollars and ——— cents, to ———, as a non-resident owner of real estate in said town, in the lists of assessments by them on the ——— day of ——— 187—, committed to ———, collector of said town for said year, together with a warrant under their hands for the collection of the same, in the form by law prescribed. And said collector, afterwards, to wit, on the ——— day of ———, 187—, made an accurate copy of so much of said lists as related to taxes assessed on the real estate of non-resident owners, which remained unpaid at that date, and certified thereon that such taxes so remained unpaid, and delivered the same to me, ———, treasurer of said town for the year 18—; in which copy the above specified assessment was included, and which said copy, so returned, I recorded according to law, and adding thereto and stating such facts as by law is required, I caused to be published in the ———, a newspaper published in said county. (If no paper is published in the county then say, in the ———, the state paper,) three weeks successively, the first publication being on the ——— day of ———, 18—, and gave notice in said advertisement, that if said taxes, interest and charges, were not paid within eighteen months from the date of commitment, so much of said estate as would be sufficient to pay the amount due therefor, would be sold without further notice, at public auction, at ———, in said town, on the ——— day of ——— 18—, at ——— o'clock in the ———noon. And in pursuance of said notice, at the time and place therein specified, I offered for sale such part of the above described real estate as would be sufficient to pay the tax, interest and charges thereon, amounting to the sum of ——— dollars and ——— cents, then unpaid, and ——— of ——— in the county of ——— offering to pay the same for the ——— of said estate, and no person offering to pay the same for a ——— fractional part of said estate, I declared said ——— to be the purchaser thereof.

Therefore, know all men by these presents, that I, the said treasurer, in the name of said town, in consideration of the sum of ——— dollars and ——— cents, to me paid for discharging the said tax, interest and charges, by said ———, do hereby sell and convey to said ———, his heirs and assigns, the above-described real estate, taxed as aforesaid.

To have and to hold the same to the said ———, his heirs and assigns, to his and their use forever; subject however, to the right of redemption of the owner thereof, or his heirs or assigns, at any time within the time specified by law.

Given under my hand and seal of office, this _____ day of _____, 18—.

Signed, sealed and delivered in presence of

L. S., Treasurer of
the town of _____.

ss.

18—.

Personally appeared _____, and acknowledged the above instrument to be his free act and deed.

Before me,

_____, Justice of the Peace.

FORM OF TREASURER'S RETURN.

Pursuant to the provisions of law, the taxes assessed on the real estate of non-resident owners in the town of _____, for the year 187—, and duly returned to me, town treasurer of the town of _____, for the year 187—, by A. B., collector of taxes for said town of _____, for the year 187—, which return was made after the expiration of nine and not exceeding twelve months from the _____ day of _____, A.D. 187—, the date of the commitment of said collector's bills, and certified by him to me to be unpaid under date of _____ 187—, which certificate, with the list of taxes so returned, I forthwith recorded in a book kept by me for that purpose, the list so returned, adding thereto the number and range of lots, rights and divisions, the valuation or other short description taken from the inventory for the year 187—, I caused to be advertised in the _____, a newspaper published in the county of _____, where the aforesaid real estate lies, (if no county paper, say, the _____, the state paper, published in _____,) three weeks successively within three months after the date of said collector's return and certificate aforesaid, to wit, the first publication being made on the _____ day of _____, 187—, and continued to be published in said paper three successive weeks next thereafter, and in said advertisement so published as aforesaid, I stated the present name and the former name of said town for the three years next preceding the date of said advertisement, and gave notice therein that if the taxes, interest and charges were not paid within eighteen months from the date of the aforesaid commitment, the same being stated in the advertisement, that I should proceed to sell so much of the estates so assessed as aforesaid, as would be sufficient to pay the amount due therefor, with interest and charges, without further notice, at public auction on the _____ day of _____ A.D. 187—, at _____ of the clock in the _____-noon, being the time of sale, and more than eighteen and not exceeding twenty months from the date of said commitment, at _____, in said town of _____, being the place of sale, and afterwards, in pursuance of said notice, to wit, on the said _____ day of _____, A.D. 187—, at _____, in said town of _____, being the day and place of sale, at _____ of the clock in the _____-noon, being the hour of sale, I proceeded to sell

according to the tenor of said advertisement the estates upon which the taxes so assessed remained unpaid, and it became necessary to sell the whole amount of the real estate so assessed and advertised, as no person would pay the taxes, interest and legal charges for a less amount of said real estate, and in the schedule following is set forth each parcel of the estate so offered for sale, the amount of the taxes, interest and charges for which it was sold, the quantity sold, and the name of the purchaser, and I have under my hand and seal of office, in the name of said town, made and executed deeds of the several parcels to the several persons entitled thereto, and placed them on file in my office, to be disposed of as the law requires.

SCHEDULE.

Name of Owner.	DESCRIPTION OF REAL ESTATE.	No. of Lot.		No. of Range.	No. of Acres.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.
		No.	of					
Abbot, John	Cyrus Keen farm.	6	2	30	\$ 3 50	30 acres.	A — B —	
Reed, Euos		10	100	100	2 50	100 acres.	C — D —	

In witness of all which I have hereunto subscribed my name, this
— day of —, 187—.

C. D., treasurer of the town of —.

The above return must be recorded within four days after the sale in a book kept for that purpose.

The above return recorded in the book mentioned will be sufficient evidence of the facts therein stated. R. S. Ch. 6, § 159.

CHAPTER XLVI.

OF ASSESSMENT AND COLLECTION OF TAXES IN PLANTATIONS, AND SALE OF LAND FOR TAXES ASSESSED THEREIN.

1. Plantations are vested with the same powers as towns as relate to the choice of clerk, assessors and collectors of taxes, * * * R. S. Ch. 6, § 86. And shall be sworn same as in towns. * * * Ib. § 88.

2. The assessors are to take a list of the polls and a valuation of estates, and make assessment of taxes, and cause the same to be collected in the same manner and form as in towns. Ib. § 90.

3. All laws and forms for calling town meetings, raising taxes, collecting same, and sale of land for taxes in towns as in this work defined are directly applicable to plantations; and to apply them it is only required to use the term "plantation of, or inhabitants of plantation of ———, (as the case may be,) instead of" town of, or inhabitants of the town of ———.

CHAPTER XLVII.

OF LANDS NOT LIABLE TO BE ASSESSED IN ANY TOWN.

1. Lands not exempted, and not liable to be assessed in any town, may be taxed by the legislature for a just proportion of all state and county taxes. Ch. 6, § 42 R. S.

2. Such lands may be assessed by the county commissioners according to the last state valuation for a due proportion of county taxes. Lists of such taxes, including those made on account of highways, shall be immediately certified and transmitted by the county treasurer to the treasurer of state. In the list, each such township and tract shall be sufficiently described, with the date, and amount of assessment on each. The treasurer of state shall,

in his books, give credit to the county treasurer for the amount of each such assessment; and when paid to him, shall certify to the county treasurer the amount of tax and interest so paid, annually, on the first Monday of January. Ib. § 43.

3. Within three months after the assessment of any such state tax by the legislature, the treasurer of state shall cause the list of such assessments, with the list of any county tax so certified to him, to be advertised three weeks successively in the state paper, and in some newspaper, if any, printed in the county in which the lands lie. The said lands shall be held to the state for the payment of such state and county taxes with interest thereon at the rate of twenty per cent., to commence at the expiration of one year from the date of the assessment. Ib. § 44.

4. The owners of the lands so assessed and advertised, may redeem them; by paying to the treasurer of state the taxes with interest thereon, within two years from the date of the assessment. Each owner may pay for his interest in any tract, whether in common or not, and shall be entitled to a certificate from the treasurer of state, discharging the tax upon the number of acres, or interest, upon which such payment is made. Each part or interest of every such township or tract, upon which the state or county taxes so advertised are not paid with interest within two years from the date of the assessment, shall be wholly forfeited to the state, and vest therein free of any claims by any former owner or person. Ib. § 45.

5. All lands thus forfeited shall, annually in the month of September, be sold by the treasurer of state at public auction to the highest bidder; but never at a price less than the full amount due thereon for such unpaid state and county taxes, interest, and cost of advertising. Notice of the sale shall be given by publishing a list of the lands to be sold with the amount of such unpaid taxes, interest, and costs on each parcel, and the time and place of sale, in the state paper, and in some newspaper, if any, printed in the county in which the lands lie, three weeks successively, within three months before the time of sale. Ib. § 46.

6. If any such tract is sold for more than the amount due, the surplus shall be held by the state to be paid to the owner, whose right has been so forfeited, upon due proof of ownership produced to the governor and council. Ib. § 47.

7. Any owner may redeem his interest in such lands, by paying to the treasurer of state his part of the sums due at any time before the sale; or after the sale, by paying or tendering to the purchaser, within a year, his proportion of what the purchaser paid therefor at the sale, with interest at the rate of twenty per cent. per annum from the time of sale, and one dollar for a release; and the purchaser, on reasonable demand, shall execute such release; and if he refuses or neglects, a bill in equity may be maintained against him and compel him to do so, with costs and any damages occasioned by such refusal or neglect. Or such owner may redeem his interest by paying as aforesaid to the treasurer of state, who on payment of fifty cents, shall give a certificate thereof; which certificate, recorded in the registry of deeds in the county where the lands lie, shall be a valid release of such interest, and the title thereto shall revert and be held as if no such sale had been made. The governor and council may draw their warrant on the treasurer for any money so paid to him, in favor of the purchaser for whom it was paid, or his legal representatives. Ib. § 48.

8. The printer's bills for advertising such lands shall be divided in each case by the number of townships and tracts advertised, and each shall be chargeable with its proportion thereof. All amounts of county taxes and interest thereon so received by the treasurer of state, shall be credited by him to the counties, to which they belong, and paid to the treasurers thereof. The treasurer of state shall make a record of his doings in every such sale; and a certified copy of such record shall be *prima facie* evidence, in any court, of the facts therein set forth. He shall give a deed to the purchaser conveying all the interest of the state in the land sold. Ib. § 49.

9. Any owner of lands so assessed by the county commissioners for county taxes, may redeem them by paying to the county

treasurer the amount due thereon for such taxes, interest and charges, and depositing with the treasurer of state the county treasurer's certificate of such payment, at any time before the sale. Ib. § 50.

No. 1. Form of assessment of county taxes by county commissioners by virtue of § 43, Ch. 6, R. S. :—

STATE OF MAINE.

O——, ss., Court of County Commissioners, —Term, A.D. 187—. Now on this —— day of ——, A.D. 187—, Ordered, That the following sums be and are hereby assessed, in accordance to the last state valuation, upon the following unincorporated townships and tracts of land in said county, (not exempted, and not liable to be assessed in any town,) for a due and just proportion of their respective county taxes in said county for the year 187 , to wit :—

DESCRIPTION.	No. of Acres.	Value.	Tax.
Andover North Surplus.	15.320	\$3.900	\$ 79.00
No. 4, Range 1.	23.488	9.100	182.00

A. B., } County
C. D., } Commissioners,
E. F., } O—— county.

Attest:

G. H., Clerk.

(The clerk of the county commissioners' court, or county commissioners should copy the above assessment and certify the same to the county treasurer in form, as follows:)

Cert. No. 1. STATE OF MAINE.

O——, ss., Court of County Commissioners, —Term A. D. 187—. To the county treasurer of said county.

I hereby certify that the foregoing is a true copy of the assessments as made by the county commissioners of said county upon the unincorporated townships and tracts of land in said county for the year 187—, as required by section 43, ch. 6 of the Revised Statutes.

G. H., Clerk.

(The county treasurer is immediately to copy, certify and transmit the above assessment to the treasurer of state.)

FORM OF CERTIFICATE.

Cert. No. 2.

STATE OF MAINE.

O—, ss.

COUNTY TREASURER'S OFFICE, }
P—, —, 187—. }

To A. B., treasurer of state. I hereby certify that the foregoing is a true copy of the assessment of taxes upon the unincorporated townships and tracts of land in said county for the year 187—, as duly certified to this office by the clerk of the court of county commissioners of said county.

C. D., County Treasurer of said county.

No. 2. Form of the state treasurer's advertisement of lists of assessments, assessed by an act of the legislature on unincorporated townships and tracts of land, as required by § 44, ch. 6 R. S.

STATE OF MAINE.

TREASURER'S OFFICE, }
Augusta, —, 187—. }

Upon the following unincorporated townships or tracts of land, not exempted and not liable to be taxed in any town, the following lists of assessments of taxes were made by an act of the legislature, approved —, 187—, for their respective just proportions of all state taxes for the year 187—, and notice is hereby given that each part or interest of every such township or tract, upon which the state taxes hereby advertised as required by § 44, chapter 6, of the Revised Statutes, are not paid with interest within two years from the date of the aforesaid assessment, viz., the approval of said act, will be wholly forfeited to the state, and vest therein free of any claims by any former owner or person, interest to commence at the expiration of one year from the approval of the above act.

DESCRIPTION.	COUNTY.	Amount of Tax.
Andover North Surplus, No. 4, Range 1,	A— COUNTY.	\$23 40
	C— COUNTY.	54 60
A, Range 2, W. E. L. S.		27 00
South half A, Range 5,		52 26

W. C., Treasurer of said State.

The above to be published within three months after the assessment three weeks successively in the State paper and some newspaper, if any, printed in the county in which the lands lie.

No. 3. Form of state treasurer's advertisement of lists of assessments assessed by county commissioners on unincorporated townships and tracts of land, as required by § 44, ch. 6 R. S.:—

STATE OF MAINE.

TREASURER'S OFFICE, }
Augusta, ———, 187—. }

Upon the following unincorporated townships or tracts of land, not exempted and not liable to be taxed in any town, the following lists of assessments were made for county tax by the county commissioners of O—— county, on the ——— day of ———, 187—, for their respective just proportions of county taxes for the year 187— as certified to this office by the county treasurer of said county. And notice is hereby given that each part or interest of every such township or tract, upon which the county taxes hereby advertised, as required by § 44, chapter 6, of the Revised Statutes, are not paid with interest within two years from the date of the aforesaid assessment, will be wholly forfeited to the state, and vest therein free of any claims by any former owner or person, interest to commence at the expiration of one year from the date of the aforesaid assessment.

DESCRIPTION.	Amount of Tax.
Andover North Surplus No. 4, Range 1,	\$ 79 00 182 00

W. C., Treasurer of said State.

The above to be advertised as in No. 2.

No. 4. Form of state treasurer's advertisement of sale of land for state and county taxes:—

STATE OF MAINE.

TREASURER'S OFFICE, }
Augusta, ———, 187—. }

Pursuant to Chapter 6, § 45, of the Revised Statutes, I shall sell at public auction, and convey by deed to the lawful bidder, at the state treasurer's office, in Augusta, on the ——— day of September next, at — o'clock in the ——— noon, all the interest of the state in the unincorporated townships and tracts of land hereinafter described, the said townships and tracts having been forfeited to the state for state taxes, and county taxes duly certified to the treasurer of state for the year 187—, the same having been duly advertised, and two years having elapsed since the date of the assessment thereof. The sale and conveyance of each township and tract will be made subject to a right in the owner or part owner, whose rights have been

forfeited, to redeem the same at any time within one year after the sale, by paying or tendering to the purchaser his proportion of what the purchaser paid therefor at the sale; with interest at the rate of twenty per cent. per annum from the time of sale, and one dollar for release; or such owner may redeem his interest by paying as aforesaid to the treasurer of state, as provided in Chap. 6, § 48, of the Revised Statutes; or such owner of lands assessed for county taxes may redeem them by paying to the county treasurer the amount due thereon for such county taxes, interest and charges, and depositing with the treasurer of state the county treasurer's certificate of the county where the lands lie, of such payment, at any time before the sale aforesaid. No tract, however, will be sold at a price less than the full amount due thereon for such unpaid state and county taxes, interest and cost of advertising, as described in the following schedule, to wit:—

DESCRIPTION.	No. of Acres.	COUNTY.	Amount of unpaid Taxes.	Amount of Interest.	Amount of Costs.
Andover North Surplus No. 4, Range 1, (County Tax)		A— COUNTY.	\$	\$	\$
No. 4, Range 3,		C— COUNTY.			

W. C., Treasurer of said State.

The above to be published in the state paper, and in some newspaper, if any printed in the county in which the lands lie, three weeks successively, within three months before the time of sale. Ch. 6, § 46, R. S.

No. 5.

FORM OF STATE TREASURER'S DEED OF LANDS FORFEITED TO THE STATE.

To all Persons to whom these Presents may come,

I, ———, Treasurer of the State of Maine,

SEND GREETING.

Whereas, in obedience to the provisions of Chapter 6, § 46, of Revised Statutes, in relation to the collection of taxes in unincorporated places, the said treasurer caused to be published a notice containing a list of all tracts of land lying in unincorporated places which have been forfeited to the state for state taxes, or county taxes, which had been certified according to law to the treasurer of state, together with the amount of such unpaid taxes; interest and costs on each parcel, and that the same would be sold at the treasury office in Augusta, on the ——— day of September, A. D. 18—, at eleven o'clock, A. M., in the state paper, and in a paper in the county

where said lands are situate, (where any such was published,) three weeks successively before the day of sale, and within three months thereof; and whereas, said list contained the following described parcel of land so forfeited, situate in the county of ———, viz; ———, upon which there was due and payable for taxes, interest and cost, the sum of ————100 dollars, including its proportion of the state tax for 18—, and of the county tax for the same year, certified to the treasurer of state according to law.

And whereas, on said ——— day of September, 18—, at eleven o'clock in the forenoon, at the treasury office in Augusta, said treasurer did sell ——— the interest of the state in said premises to ———, at auction for the sum of ————100 dollars, ——— being the highest bidder therefor, and his bid being a price not less than the full amount due thereon for such unpaid state and county taxes, interest and cost of advertising, as required by law.

Now know ye, That I, ———, in my said capacity, in consideration of the premises and of the payment of the said sum of ———100 dollars, the receipt whereof is hereby acknowledged, do hereby sell and convey to ———, the said ——— heirs and assigns forever, all the interest of the state by virtue of said forfeiture, in and to said premises so sold as aforesaid. To have and to hold the same, with all the privileges thereof to ———, the said ———, heirs and assigns forever, subject to all taxes assessed thereon subsequent to the year eighteen hundred and sixty- ———; *provided, however*, that any owner or part owner thereof shall have the right to redeem his proportion of the same at any time within one year, by paying or tendering to the purchaser, or treasurer of state, his proportional part of what the said ——— paid for the same, with interest at the rate of twenty per cent. per annum and the cost of conveyance, as provided in Chapter 6, § 36, of Revised Statutes.

In witness whereof, I, the said ———, in my said capacity have hereunto set my hand and seal, this ——— day of September, in the year of our Lord one thousand eight hundred and ———.

——— (t. s.) State Treasurer.

Signed, sealed and delivered in presence of

———,

KENNEBEC, ss.

——— A. D. 18—.

Personally appeared the above named ——— and acknowledged the foregoing instrument by him signed, as treasurer of state as aforesaid, to be his free act and deed.

Before me,

———, Justice of the Peace.

FORM OF RECORD OF STATE TREASURER'S DOINGS IN SALE
OF LAND.

STATE OF MAINE.

STATE TREASURER'S OFFICE, }
Augusta, Sept, 7, 187—.

Be it remembered that on the seventh day of September, in the year of our Lord one thousand eight hundred and seventy —, at one o'clock in the afternoon, at the state treasurer's office of the State of Maine, at Augusta, in the County of Kennebec, in said state, I exposed for sale and sold the following tracts of land at public auction, offering and selling each of said tracts singly, the same having been previously forfeited to the State of Maine aforesaid for the non-payment of state taxes for the year A. D. 186—, and the county taxes for said year last named, duly certified and transmitted to the state treasurer of the state aforesaid, by the respective county treasurers for the respective counties hereinafter mentioned in the lists so certified and transmitted, each township and tract was sufficiently described with the date and amount of assessment on each, which the treasurer of said state duly credited in his books to the respective county treasurers the amount of each such assessment. Said lands so taxed and sold remained unredeemed from said taxes for more than two years from the date of the assessment upon the aforesaid tracts before said sale, and within three months after the assessment of said state taxes by the legislature of said state, the treasurer of said state caused the list of said state assessments, with the lists of the said respective county taxes so certified and transmitted to be advertised three weeks successively in the Kennebec Journal, the state paper, printed in said Augusta, and the lists of said county taxes to be advertised three weeks successively, as follows, the list of assessments for the County of Hancock, in the Ellsworth American, a newspaper printed in said county, and where all the tracts so assessed in said county lie; the list of assessments for the County of Washington, in the Calais Advertiser, a newspaper printed in said county, and where all the tracts so assessed in said county lie; the list of assessments for the County of Oxford, in the Oxford Democrat, a newspaper printed in said county, and where all the tracts so assessed in said county lie. Previous to said sale, and within three months before the time of sale, I caused notices of the time and place of said sale, and lists of the lands intended to be sold, with the amount of unpaid taxes, interest, and cost on each parcel to be published three weeks successively, as follows, viz.:— First, in the Kennebec Journal, the state paper, printed in said Augusta, a list of all said tracts so sold. Second, lists of assessments for the County of Hancock in the Ellsworth American, a newspaper printed in said county, and where all the tracts so assessed in said county lie. Third, the list of assessments for the County of Washington, in the Calais Advertiser, a newspaper printed in said county,

and where all the tracts so assessed in said county lie. Fourth, the list of assessments for the County of Oxford, in the Oxford Democrat, a newspaper printed in said county, and where all the tracts so assessed in said county lie. And pursuant to said notices at the time and place aforesaid, viz., at the said state treasurer's office, and at one o'clock in the afternoon on said seventh day of September A. D. 187—, I made said sale of said tracts separately, and in the schedule following is set forth each parcel or tract so advertised and sold, the amount of the state and county taxes, interest, cost, the price for which it was sold, and the county where each tract or parcel is situate, and the name of the purchaser, the tract or parcel being in each case sold for a price not less than the full amount due thereon for such unpaid state and county taxes, interest, and cost of advertising; and I have executed, in pursuance of said sales, deeds to the several purchasers, conveying all the interest of the state aforesaid in each tract so as aforesaid sold.

Name of Tract.	Amount of State Tax.	Interest.	Amount of County Tax.	Interest.	Cost.	Price.	Name of county where situate.	Name of Purchaser.
Swar Island,	\$ 5 57	\$ 1 67	\$ 7 02	\$ 56	\$ 1 00	\$15 82	Hancock.	John Smith.

W. C., Treasurer of the State of Maine.

CHAPTER XLVIII.

OF THE COLLECTION OF TAXES TO BUILD AND REPAIR ROADS IN PLACES NOT INCORPORATED.

1. When a road is laid over lands, under the provisions of section thirty-two, chapter eighteen, the county commissioners shall immediately thereafter assess thereon such an amount as they judge necessary for making, opening, and paying expenses attending it; and such assessment shall create a lien thereon for the payment thereof; and they may make as many divisions as are equitable, conforming as nearly as is convenient to known divisions and separate ownerships, and assess upon each a sum proportionate

to the value thereof, and the benefits likely to result to the same by the establishment of the road ; when such assessment will be unreasonably burdensome to such owners, they shall assess an equitable sum on the county, and the balance only on such lands. Any person aggrieved by any assessment, may appeal to the supreme judicial court, at the term thereof held first after such assessment ; and the presiding judge at that term shall, on hearing the case, determine what part of said assessment shall be paid by the owners of the tract or township, and what part, if any, by the county ; and there shall be no appeal from such decision. They shall at the same time fix the time for making and opening such road not exceeding two years, and appoint an agent or agents, not members of their board, to superintend the same, who shall give bond to the treasurer of the county, with sureties, to be approved by them, to expend the money faithfully, and to render account thereof on demand ; and they shall publish a list of the townships and tracts of land so assessed, with the sum assessed on each, and the time in which the road is to be made and opened, in the state paper, and in some paper, if any, printed in the county where the lands lie, three weeks successively, the last publication to be within three months from the date of the assessment. Ch. 6, § 51, R. S.

2. If the owners shall make and open such road to the acceptance of the commissioners, after an actual examination by one or more of their board, within said time, the assessment shall thereby be discharged ; otherwise it shall be enforced as hereinafter provided, and the agents shall proceed immediately to make and open it. Ib. § 52.

3. Said county commissioners, in September annually, by one or more of their board, shall make an annual inspection of all county roads in the unincorporated townships, and tracts of land in their counties, and thereupon make an estimate of the amount needed to put them in repair, so as to be safe and convenient for public travel, assess such amount thereon, and cause so much thereof as they deem necessary for the purpose aforesaid, to be expended on said roads within one year hereafter, and such

assessment shall create a lien thereon for the payment thereof. They shall make such assessment by the first day of January in each year, and at the same time appoint an agent or agents, not members of their board, to superintend the expenditure thereof, who shall give bonds as provided in section fifty-one ; and they shall publish a list of the townships and tracts of land so assessed, with the sums so assessed on each, and the roads on which it is to be expended, in the state paper, and in some paper, if any, printed in the county where the lands lie, three weeks successively, the last publication to be within three months from the date of the assessment. Ib. § 53.

4. If by the fifteenth of July following in each year, the owner of such lands shall repair such roads to the acceptance of the commissioners, after an actual examination by one or more of their board, the assessment shall be thereby discharged ; otherwise it shall be enforced as hereinafter provided, and the agents shall proceed immediately to repair such roads. Ib. § 54.

5. If any owner fails to pay the sum so assessed on his land within two months from the time fixed for making and opening a new road, as provided in section fifty-two, or within two months after the fifteenth of July, for repairing roads, as provided in the preceding section, the county treasurer shall proceed to sell the lands so assessed by advertising the lists of unpaid taxes, with the date of assessment, and the time and place of sale, in the state paper, and in some paper, if any, printed in the county where the lands lie, three weeks successively, the last publication to be at least thirty days before the time of sale. No bid shall be received at such sale for less than the amount due for the tax, costs and interest at twenty per cent. per annum from the time prescribed for the payment of said tax ; and the treasurer shall sell so much of such land as is necessary to pay the unpaid tax, costs and interest as aforesaid, and give a deed thereof to the purchaser, if any ; and if no one becomes a purchaser at such sale, it shall be forfeited to the county ; and such owner or part owner or tenant in common may redeem his interest therein at any time within two years from the sale or forfeiture by paying to the purchaser or the

county the sum for which it was sold or forfeited, with interest at twenty per cent. per annum, and any sums subsequently paid for state and county taxes thereon. Ib. § 55.

6. Any owner of lands so sold, shall be entitled to his share in any overplus of the proceeds of such sale, on exhibiting to the treasurer satisfactory evidence of his title. Ib. § 56.

7. In any trial at law or in equity involving the validity of any sale or forfeiture of such lands, as provided in the preceding section, it shall be *prima facie* proof of title for the party claiming under it, to produce in evidence the county treasurer's deed, duly executed and recorded, the assessments signed by the county commissioners and certified by them or their clerk to the county treasurer, and to prove that the county treasurer complied with the requirements of the law in advertising and selling. But the purchaser or the county shall have a lien on the land sold or forfeited for the taxes, costs and interest, and any subsequent taxes legally assessed thereon and paid by either or those claiming under them ; and such sums shall be paid or tendered, before any person shall commence, maintain or defend any suit at law or in equity, involving the title to such lands under such sale or forfeiture, notwithstanding any irregularities or omissions in such sale or forfeiture. Ib. § 57.

8. Purchasers of land sold by reason of the non-payment of state and county taxes, and assessments for opening, making, and repairing roads, shall have no claim against the state or county for any defect in the title under such sale, notwithstanding any irregularities in the proceedings, or failure to comply with the provisions of law under which the sales were made. The deeds given pursuant to sales made for non-payment of state and county taxes, shall vest in the grantee the title of the state, or of the county, to the lands sold, subject to the conditions of sale, and no more. Ib. § 58.

9. Any owner, part owner, tenant in common, or other person having a legal interest in any tract so advertised, sold, or forfeited, may redeem his interest by paying within the times prescribed, the amount as required to discharge the claim upon his interest..

The rate of interest upon unpaid state and county taxes, and taxes assessed by county commissioners for opening, making, and repairing roads, shall be twenty per cent., and shall commence at the expiration of one year from the date of the assessments. Ib. § 59.

No. 6. Form of an assessment by county commissioners of lands in unincorporated townships and tracts for making and opening roads therein.

STATE OF MAINE.

O——, ss., Court of County Commissioners, —Term A.D. 187—.

Whereas, the county commissioners of said county of O——, on petition of A. B., and others as provided in section one, chapter eighteen, of the revised statutes, did, on the —— day of —— A.D. 187—, in pursuance of section thirty-two, chapter eighteen, of the revised statutes, lay out a highway or road over lands in the unincorporated township known as ——— township, a tract of land insaid county, not within any town or plantation required by law to raise money, to make and repair highways, notice being given for a hearing on said petition as provided by section thirty-three of said chapter of the revised statutes, they did in compliance with section four of said chapter, perform the duties required to lay out said road commencing at ——, in said township, over lands to ——, in said township; and now said county commissioners on this —— day of ——, 187—, being a day immediately after the location aforesaid, do hereby assess on the lands in said township the sum of —— dollars, and do adjudge said amount necessary for making, opening, and paying expenses attending said road, and for the purpose of raising a tax to make, open, and pay expenses attending said road. We do therefore divide said township into as many divisions as are equitable, conforming as nearly as is convenient to known divisions and separate ownerships, and do assess upon each, a sum exclusive of lands reserved for public uses, a sum proportionate to the value thereof, duly regarding the benefits likely to result to said divisions by the establishment of said road, not regarding said assessment upon said township as unreasonably burdensome to the owners thereof, we assess the sum necessary, as aforesaid, for making, opening, and paying expenses attending said road on the lands in said township; to wit:

On Division or Lot.	ESTIMATED TO CONTAIN.	Cents	
		per Acre.	Amounting to
No. 1,	2,000 acres,	a 7 cts. per acre,	\$ 140 00
No. 2,	3,000 acres,	a 4 cts. per acre,	120 00

And no person being aggrieved by any assessment aforesaid, and taking no appeal in the premises, we do hereby order that said road shall be made and opened within one year from this date, and A. B., of ———, is hereby appointed to superintend the expenditure of said sum in making and opening said road, and said agent is hereby required to give bonds to the treasurer of said county, with sureties to be approved by the county commissioners, to expend the money faithfully, and to render account thereof on demand; and if the owners of lands assessed as aforesaid shall fail to make and open said road to the acceptance of the county commissioners for said county after actual examination by one or more of the board, within said one year, then the aforesaid agent shall proceed immediately thereafter to make and open said road. And it is further ordered that said assessment be published forthwith as the law requires, three weeks successively, the last publication to be within three months from the date of the assessment aforesaid, in the Kennebec Journal, the state paper, printed at Augusta, in the state of Maine, and in the ———, a newspaper printed at ———, in said county, where the aforesaid lands lie.

A. B., } County Commissioners
C. D., } of
E. F., } O—— county.

Attest:

G. H., Clerk.

A true copy. Attest:

G. H., Clerk.

The above to be certified by county commissioners to county treasurer, and by county treasurer to state treasurer. See certificates Nos. 1 and 2, to form No. 1, Ch. 47.

No. 7. Form of county treasurer's advertisement for sale of lands for making and opening county roads in unincorporated townships and tracts of land.

COUNTY TREASURER'S SALE OF LANDS.

STATE OF MAINE.

Whereas, the county commissioners of the county of O——, on petition of A. B. and others, as provided in section one, chapter eighteen, of the revised statutes, did, on the ——— day of ——— A.D. 187—, in pursuance of section thirty-two, of said chapter eighteen, lay out a highway or road over lands in the unincorporated township, known as ——— township, in said county, and in compliance with section four of said chapter, had performed the duties required to lay out said road, commencing at ———, in said township over lands to ———, in said township, and whereas said county commissioners on the ——— day of ———, at a term of said county commissioner's court held in said county on the ——— day of ———, 187—, being a day immediately after the location of the road aforesaid, did assess on the lands in said township

the sum of ——— dollars, and did adjudge said amount necessary for making, opening, and paying expenses attending said road, and for the purpose of raising a tax to make, open, and pay expenses attending said road, did divide said townships into as many divisions as were equitable, conforming as nearly as was convenient to known divisions and separate ownerships, and did assess upon each, exclusive of lands reserved for public uses, a sum proportionate to the value thereof, duly regarding the benefits likely to result to said divisions by the establishment of said road, not regarding said assessment upon said township as unreasonably burdensome to the owners thereof, a list whereof was duly certified by said commissioners to this office as hereinafter stated. And said county commissioners at the same time ordered that said road should be made and opened within one year from the said ——— day of ———, 187—, and at the same time appointed ———, of ———, agent, to superintend the expenditure of said sum in the making and opening of said road, who gave bond to the treasurer of said county with sureties approved by said commissioners to expend the money faithfully, and to render account thereof on demand, and the said commissioners after making said assessments published forthwith a list of said divisions of lands in said township so as aforesaid assessed, with the sum assessed on each; and the said road on which the same was to be expended, in the Kennebec Journal, the state paper, printed at Augusta, state of Maine, and in the ———, a public newspaper printed at ———, in said county of ———, three weeks successively in each, the last publication in each, being within three months from the date of the assessment aforesaid; and the said commissioners, after the expiration of the aforesaid one year had expired made an actual examination of said road, and thereupon found and adjudged that the owners of said divisions of lands as aforesaid assessed had not made and opened said road to their acceptance, and as the law required, and thereupon said ———, agent as aforesaid, proceeded immediately after the expiration of the year aforesaid to make and open said road, and lawfully expended in making and opening said road, so much of said assessment as was necessary to make and open said road to make the same safe and convenient for public travel; and the several owners of the following divisions and tracts have failed for more than two months from the time fixed as aforesaid, for making and opening said road, and still do fail to pay the several sums assessed on their respective divisions and tracts as aforesaid, or any part thereof, and the same now remain due and unpaid, as certified to this office by the county commissioners aforesaid, as follows, to wit:

On Division or Lot.	ESTIMATED TO CONTAIN.	Cents per Acre.	Amount now due and unpaid.
No. 1,	2,000 acres,	a 7 cts. per acre.	\$ 140 00
No. 2,	3,000 acres,	a 4 cts. per acre.	120 00

Now, therefore, pursuant to chapter 6, section 55, of the revised statutes, notice is hereby given to the owners, proprietors, and all interested in the above described lands, that I shall sell at public auction and convey by deed to the highest bidder, if such bidder at said sale shall bid an amount not less than the amount due on each said division and tract for the tax, costs and interest at twenty per cent. per annum from the time prescribed for the payment of such tax, at the county treasurer's office in ———, said county, on the ——— day of ——— next, at ——— o'clock, in the ———noon, so much of each of said divisions and tracts of land so assessed as aforesaid, on which said taxes, interest, and lawful charges shall be then unpaid, and shall be necessary to pay the several taxes thereon respectively then due, with interest at the rate of twenty per cent. per annum, from ——— day of ——— A.D. 187 —, to said day of sale, and legal costs and all of said divisions and tracts of land on which said taxes, interest, and cost shall then remain unpaid, and shall not be as aforesaid sold, will be forfeited to the county. The sale and conveyance of said lands and forfeiture thereof will be made subject in the owners, or part owners or tenants in common of the same, to redeem their respective interests within two years from the day of sale or forfeiture, by payment to the purchaser or the county the sum for which the respective divisions and tracts were sold or became forfeited with interest at twenty per cent per annum, and any sums subsequently paid for state and county taxes thereon.

A. B., County Treasurer for said county.

County Treasurer's office, P———, ———, 187.

No. 8.—Form of County Treasurer's Deed of Land sold for the payment of taxes to make and open a county road in an unincorporated township.

To all People to whom these Presents may come.

I, ———, Treasurer of the County of O———, in the State of Maine,

SEND GREETING:

Whereas, on petition of A. B. and others duly presented, and in conformity to the provisions of Chapter 18, section 32 of the Revised Statutes, the county commissioners of O——— county duly laid out a county road or highway over lands in the unincorporated township of ———, in said county, and immediately thereafter, said commissioners, in compliance with section 51 of Chapter 6 of the Revised Statutes, at a Court of County Commissioners, begun and holden at P——, in said county, on the ——— day of ———, A. D. 187——, did assess thereon such an amount as they judged necessary for making, opening and paying expenses attending it, to wit: the sum of ——— dollars and ——— cents, making as many divisions as were equitable, conforming as nearly as was convenient to known divisions and separate ownerships, and did assess upon each of said divisions and

tracts a sum proportionate to the value thereof, regarding the benefits likely to result to the same by the establishment of said road, and did, in compliance with said section 51, fix the time for making and opening said road, and did appoint an agent to superintend the same, who duly gave bond to the treasurer of said county, and did publish a list of the divisions and tracts of land so assessed, with the sum assessed on each, and the time in which the road was to be made and opened, as by law required, three weeks successively in the Kennebec Journal, the State paper, printed at Augusta, and in the _____, a newspaper printed at _____, in said county, the last publication being within three months from the date of said assessment; and whereas the owners of said divisions and tracts of land failed to make and open said road as required by section 52 of said Chapter 6, and the agent so appointed, in compliance with said section, made and opened said road; and whereas the owners of said divisions and tracts of land fail to pay the sum so assessed on their respective divisions and tracts within two months from the time fixed for making and opening said road, as provided in section 52 of said Chap. 6; and whereas, in accordance to the provisions of section 55 of said Chapter 6, in relation to the collection of taxes in unincorporated places, the said treasurer caused to be published a notice, containing a list of all divisions and tracts of land lying in said unincorporated township or tract, which had been duly certified by said commissioners, according to law, to the treasurer of said county, together with the amount of such unpaid taxes, with the date of the assessment, and that the same would be sold at the treasurer's office in said _____ on the _____ day of _____, A. D. 187—, at _____ o'clock _____-noon, in the Kennebec Journal, the state paper printed at Augusta, in said state, and in _____, a newspaper printed in _____, in said county, three weeks successively before the day of sale, the last publication in each of said papers aforesaid being thirty days before the time of said sale; and whereas said list contained the following described division or parcel of land situate in said township _____, viz., _____ upon which there was due and payable for taxes, interest and cost the sum of _____ dollars _____ cents, certified to said treasurer according to law. And whereas on said _____ day of _____, 187—, at _____ o'clock in the _____-noon, at the treasurer's office in said _____, said treasurer did sell the whole of said division to _____, at auction, for the sum of _____ dollars and _____ cents, he being the highest bidder therefor, said bid being not less than the full amount due thereon for such unpaid taxes, interest and cost; and as no person would bid the amount of the unpaid taxes, cost and interest thereon for a fractional part of said division or tract of land, it became necessary to sell as aforesaid the whole of said division or tract so assessed and advertised. Now, know ye, that I, _____, in my said capacity, in consideration of the premises and of the payment of such sum of _____ dollars and _____ cents, receipt whereof I do acknowledge, do hereby sell and convey to the said _____, his heirs and assigns forever,

said described division or tract of land, he the said _____ being the highest bidder therefor, to have and to hold the same, with all the privileges thereof to the said _____, heirs and assigns forever, subject to any sum subsequently paid for state and county taxes thereon; provided, however, that any owner or part owner, or tenant in common, shall have the right to redeem his interest therein at any time within two years from said sale, by paying to the purchaser or the county the sum for which it was sold, with interest at twenty per cent. per annum, as provided by Chapter 6, section 55 of the Revised Statutes.

In witness whereof, I, the said _____, in my said capacity have hereunto set my hand and seal, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____.
(L. S.)

Signed, sealed and delivered in presence of

_____,

_____, ss.

_____ A. D. 18—.

Personally appeared the above named _____ and acknowledged the foregoing instrument by him signed, as treasurer of said county as aforesaid, to be his free act and deed.

Before me,

_____, Justice of the Peace.

No. 9.—Form of assessment by County Commissioners, to repair county roads in unincorporated townships, and tracts of land.

STATE OF MAINE.

O_____, ss. — Court of County Commissioners, _____ Term, A. D. 187—.

The County Commissioners for the County of O_____, in the month of September, A. D. 187—, as provided by law, made actual inspection of the county roads duly located, and open for travel, lying in the unincorporated townships, and tracts of land hereinafter mentioned, in said county, for the purpose of ascertaining the condition of said roads, and estimating the amount needed to put the same in repair, so as to be safe and convenient for public travel; and it appearing on said inspection, that said roads were not in good repair, and not safe and convenient for purposes of public travel, and that a tax should be assessed on said land, for the repair of said roads therein; they do, therefore, on this _____ day of _____ A. D. 187—, adjudge, and order that the following sums be assessed, and the same are hereby assessed upon the following lands, in the unincorporated townships and tracts hereinafter mentioned, for the purposes of repairing the roads passing through them during the year 187—, to wit: On Andover North Surplus, for the purpose of repairing the road passing through said Surplus to the town of P_____,

on the east side of the A—— River, the sum of —— dollars and —— cents, to wit:

On lot No. 1, containing 100 acres at — cts. per acre, amounting to —— \$ — cts.

On lot No. 2, Range 6, containing 160 acres, at — cts. per acre, amounting to —— \$ — cts.

And A. B. of P——, is hereby appointed agent to superintend the expenditure of said sum, in repairing said road in said Surplus.

And the said agent hereby appointed, is required to give bonds to the Treasurer of the County, with sureties, to be approved by the County Commissioners, to expend the money faithfully, and to render an account thereof on demand; and if the owners of land assessed as aforesaid, shall fail to repair said road to the acceptance of the County Commissioners for said county, by the fifteenth day of July, A. D. 187—, then the aforesaid agent, shall immediately thereafter proceed to expend said sum in repairing said road as provided by law. And it is further ordered, that said assessment be published forthwith, as the law requires, three weeks successively in the Kennebec Journal, the State paper, printed in Augusta, in said State, and in the ——, a newspaper printed in said O—— County, the last publication to be within three months from the date of the assessment aforesaid.

A. B. } County
C. D. } Commissioners of
E. F. } O—— County.
G. H. Clerk.
G. H. Clerk.

At'est,

A true copy, Attest,

The above to be certified by County Commissioners to County Treasurer, and by County Treasurer to State Treasurer. See certificates Nos. 1 and 2, to form No. 1, Ch. 47.

No. 10.—Form of County Treasurer's advertisement for sale of lands for repair of county roads in unincorporated townships and tracts of land.

COUNTY TREASURER'S SALE OF LANDS.

STATE OF MAINE.

Whereas the County Commissioners of the County of ——, in the month of September, A. D. 187—, made an inspection of all the county roads duly located, and open for travel, lying in the unincorporated townships and tracts of land hereinafter mentioned in said county, and found, and adjudged the county roads therein defective; and thereupon made an estimate of the amount needed in each of said townships, and tracts, to put the defective roads therein in repair, during the year A. D. 187—, so that the same might be safe and convenient for public travel; and at an adjourned session of the December term of said Commissioners Court, held in said

county, on the —— day of December, 187—, said Commissioners for the purpose of raising a tax to repair said defective roads, in the said respective townships, and tracts, assessed upon said respective townships, and tracts, the respective estimated sums which they deemed necessary, for making said repairs, on the roads in each said respective township, and tract, exclusive of lands reserved for public uses, and at the same time appointed agents to superintend the expenditure of said assessments on said defective roads as the law requires; who gave their respective bonds, with sureties, approved by said commissioners to expend the money faithfully, and to render account thereof on demand; the said respective estimated sum in each said township and tract, which they deem necessary for making said repairs, is hereinafter stated; and the said Commissioners after making said assessments, published a list of said townships and tracts so as aforesaid assessed, with the sum assessed on each; and the said roads on which the same was to be expended, in the Kennebec Journal, the State paper, printed at Augusta, State of Maine, and in the —— a public newspaper printed at ——, in said county of ——, three weeks successively in each, the last publication in each being within three months from the said date of said assessment; and the said Commissioners on the fifteenth day of July, 187—, made an actual examination of said county roads, and thereupon found and adjudged, that the respective owners of said townships and tracts of land, so as aforesaid assessed, had not repaired the said roads in their respective townships and tracts of land, to their acceptance, and as the law requires, and thereupon said agents as aforesaid, proceeded immediately, after said fifteenth day of July, to repair said roads, and lawfully expended thereon, within one year from the same assessment, so much of said assessment as was necessary to put said roads in such repair, that the same were thereby made safe and convenient for public travel; and the several owners of the following said townships and tracts, have failed for more than two months since said fifteenth day of July, and still do fail to pay the several sums assessed on their respective townships and tracts, as aforesaid, or any part thereof, and the same now remain due, and unpaid, as certified to this office by the County Commissioners aforesaid, as follows, viz:

No.	Range	DESCRIPTION.	No. of Acres.	Mills per Acre.	Amount assessed.		Amount unpaid and now due.	
					\$	cts.	\$	cts.

Now, therefore, pursuant to Ch. 6, section 55 of the Revised Statutes, notice is hereby given to the owners, proprietors, and all interested in the above described lands, that I shall sell at public auction, and convey by deed to the highest bidder, if such bidder at said sale

shall bid an amount not less than the amount due on each said township and tract, for the tax, costs and interest at 20 per cent. per annum, from the time prescribed for the payment of such tax, at the county Treasurer's office in ———, in said county, on the ——— day of ——— next, at ——— o'clock, in the ——— noon, so much of each of said townships and tracts of land, so assessed as aforesaid, on which said taxes, interest, and lawful charges shall be then unpaid, as shall be necessary to pay the several taxes thereon, respectively, then due, with interest at the rate of 20 per cent. per annum, from said ——— day of ———, A. D. 187—, to said day of sale, and legal cost, and all of said townships and tracts of land, on which said taxes, interest and cost shall then remain unpaid, and shall not be as aforesaid sold, will be forfeited to said county. The sale and conveyance of said lands, and forfeiture thereof will be made subject in the owners, or part owners, or tenants, in common of the same, to redeem their respective interests within two years from the day of sale or forfeiture, by payment to the purchaser, or the county, the sum for which the respective townships and tracts were sold, or became forfeited, with interest at twenty per cent. per annum, and any sums subsequently paid for State and County taxes thereon.

A. B., County Treasurer for said County.

County Treasurer's Office,

P———, ———, 187—.

No. 11.—Form of County Treasurer's deed of land sold for the payment of taxes for repair of county roads in unincorporated townships and tracts of land.

To all People to whom these Presents may come.

I, ———, Treasurer of the County of O———, in the State of Maine,

SEND GREETING:

Whereas, the county commissioners of the county of ———, in the month of September, A. D. 187—, made an inspection of all the county roads duly located and open for travel, lying in the unincorporated township, known as township ———, in said county, and found and adjudged the following county roads therein defective, and thereupon made an estimate of the amount needed to put said defective roads, to wit: the county road in said township, leading from ———, in said county, to the dwelling house of ———, in said township; also the county road in said township leading from ———, in said township, to ———, in said township, in repair during the year A. D. 187—, so that the same might be safe and convenient for public travel; and whereas, at an adjourned session of the December term of said Commissioners' Court, held in said county, on the ——— day of December, 187—, said commissioners, for the purpose of raising a tax to repair said defective roads in said township, assessed upon the lands in said township, exclusive of

lands reserved for public uses, the estimated sum which they deemed necessary for making said repairs on the said roads, in said township, to wit: — dollars and — cents, and at the same time appointed —, of —, agent to superintend the expenditure of said assessments, on said defective roads as the law required, and who gave bond with approved sureties, as the law required; and the said commissioners, after making said assessment, published a list of lots and divisions of land in said township so aforesaid assessed, with the sum assessed on each, and the said roads on which the same was to be expended, in the Kennebec Journal, the State paper, printed at Augusta, in the State of Maine, and in the —, a public newspaper printed at —, in said county of —, three weeks successively in each, the last publication in each being within three months from the said date of said assessment; which said list of lots and divisions of land, with the amount assessed thereon as aforesaid, were duly certified by said commissioners to the treasurer of said county; and whereas the said commissioners, on the fifteenth day of July, A. D. 187—, made an actual examination of said county roads, and thereupon found and adjudged that the owners of said divisions and lots of land so as aforesaid assessed had not repaired said roads to their acceptance, and as the law requires; and whereas the said — agent, as aforesaid, had proceeded, immediately after said fifteenth day of July, to repair said road, and lawfully expended thereon within one year from the same assessment so much of said assessment as was necessary to put said roads in repair, so that the same were safe and convenient for public travel; and whereas the several owners of the following lots or divisions have failed for more than two months since said fifteenth day of July, and still does fail to pay the sum assessed on said lots or divisions as aforesaid, or any part thereof, and the same now remains due and unpaid; and whereas, in accordance to the provisions of Section 55 of Chapter 6 of the Revised Statutes, in relation to the collection of taxes in unincorporated places, the said treasurer caused to be published a notice, containing a list of all the lots and divisions of land lying in said unincorporated township or tract, which had been duly certified by said commissioners to the treasurer of said county, together with the amount of such unpaid taxes, with the date of the assessment, and that the same would be sold at the treasurer's office in said — on the — day of —, 187—, at — o'clock — noon, in the Kennebec Journal, the State paper, printed at Augusta, in said State, and in —, a newspaper printed in —, in said county, three weeks successively before the day of sale, the last publication in each of said papers as aforesaid being thirty days at least before the time of said sale; and whereas said list contained the following described division or parcel of land, situate in said township —, viz. —, upon which there was due and payable for taxes, interest and cost, the sum of — dollars and — cents, certified to said treasurer as afore-

said; and whereas on said _____ day of _____, 187—, at _____ o'clock in the _____ noon, at the treasurer's office in said _____, said treasurer did sell the whole of said division or parcel of land to _____, at auction, for the sum of _____ dollars and _____ cents, he being the highest bidder therefor, said bid being not less than the full amount due thereon for such unpaid taxes, interest and cost, and as no person would bid the amount of the unpaid taxes, cost and interest thereon, for a fractional part of said lot or division of land, it became necessary to sell as aforesaid the whole of said lot or division as assessed and advertised.

Now know ye, That I, _____, in my said capacity, in consideration of the premises and of the payment of the said sum of _____ dollars and _____ cents, the receipt whereof I do acknowledge, do hereby sell and convey to the said _____, his heirs and assigns forever said described division or lot of land, he, the said _____, being the highest bidder therefor, to have and to hold the same, with all the privileges thereof to the said _____, heirs and assigns forever, subject to any sum subsequently paid for state and county taxes thereon; *provided, however*, that any owner or part owner or tenant in common shall have the right to redeem his interest therein at any time within two years from said sale, by paying to the purchaser, or the county, the sum for which it was sold, with interest at the rate of twenty per cent. per annum, as provided by Chapter 6, Section 55, of the Revised Statutes.

In witness whereof, I, the said _____, in my said capacity, have hereunto set my hand and seal, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____.
(L. S.)

Signed, sealed and delivered in presence of

_____, ss.

A. D. 187—.

Personally appeared the above named _____, and acknowledged the foregoing instrument by him signed, as treasurer of said county as aforesaid, to be his free act and deed.

Before me,

_____, Justice of the Peace.

CHAPTER XLIX.

OF DISTRESS AND COMMITMENT FOR NON-PAYMENT OF TAXES.

1. Every collector or constable, required to collect taxes, shall receive a warrant from the selectmen or assessors of the kind hereinbefore mentioned, and shall faithfully obey its directions. R. S. Ch. 6, § 99. See Ch. 42 for forms of warrants.

2. In case of distress or commitment for the non-payment of taxes, the officer shall have the same fees which sheriffs have for levying executions, saving that the travel, in case of distress, shall be computed only from the dwelling house of the officer to the place where it is made. Ib. § 98.

3. If any person refuses to pay the whole or any part of the tax assessed against him in accordance with the provisions of this chapter (viz. Ch. 6, R. S.) the constable, collector, or other person whose duty it is to collect the same, may distrain him by any of his goods and chattels not by the law exempt, for the whole or any part of his tax, and keep such distress for the space of four days at the expense of the owner, and if he does not pay his tax within that time, the distress shall be openly sold at vendue by the officer for its payment. Notice of such sale shall be posted up in some public place in the town, at least forty-eight hours before the expiration of said four days. Ib. § 104.

Taverns, stores, court and custom houses, and post offices, are public places.

(FORM OF NOTICE.)

NOTICE!

Taken on the —— day of ——, 187—, one cow of A. B., of ——, as a distress for taxes duly assessed against him, the said A. B., and in bills duly committed to me for collection, which taxes the said A. B. refuses to pay, and said cow will be openly sold by me at vendue for cash, at the store of —— ———, in the town of

———, on the —— day of ——, A. D. 187—, at —— o'clock in the ——noon, if said taxes, with the expense of keeping said distress, are not paid before that time.

Dated this —— day ——, A. D. 187—.

C. D., { Collector of Taxes of the town
of ——, for 187—.

4. The officer, after deducting the tax and expense of sale, shall restore the balance to the former owner, with a written account of the sale and charges. Ib. § 105.

(FORM OF ACCOUNT OF SALE AND CHARGES.)

Account of the sale of a cow belonging to A. B., of ——, taken, distrained and openly sold by me at vendue, for the payment of his taxes in the bills committed to me to collect for the year 187—:

One cow, sold to E. F. for A. B.'s taxes.....	\$25.00
Poll tax.....	\$ 3.00
Real and Personal tax.....	10.00—\$13.00

(Charges)

Travel from my dwelling house to place of distress, 4 ms.....	0.16
3 per cent. on \$13.00, amount of tax collected.....	0.39
Expense of keeping cow 4 days.....	1.00—\$ 1.55
Balance, after deducting the tax and expense of sale, to be restored to A. B.....	10.45—\$25.00

Dated this —— day of ——, A. D. 187—.

C. D., { Collector of Taxes of the town
of ——, for 187—.

The collector should keep a record of the notice and sale for his own security, and should make a return of his doings upon his warrant.

5. The return of a collector, upon his warrant, on the distress and sale of chattels, is *prima facie* evidence of his having tendered to the former owner the overplus arising from such sale. Deane v. Washburne, 17 Maine, 100. Caldwell v. Hawkins, 40 Maine, 526.

(FORM OF RETURN ON WARRANT.)

O——, ss. 187—. By virtue of the within warrant, on the —— day of ——, 187—, I took one cow, the property of the within named A. B., and kept her for the space of four days thereafter, within which time, and at least forty-eight hours before the expiration of said four days, viz., on the —— day of ——, 187—, I posted notice at the store of ——, in the town of ——, being a public place therein, that one cow of A. B., taken on the —— day of —— A. D. 187—, as a distress for taxes duly

assessed against him, the said A. B., and in bills duly committed to me for collection, which taxes the said A. B. refused to pay, and that said cow would be openly sold by me at vendue for cash, at the store of ———, in the town of ———, on the ——— day of ———, A. D. 187—, at ——— o'clock in the ———noon, if said taxes, with the expense of keeping said distress, were not paid before that time; and on said day of ———, 187—, at ——— o'clock in the ———noon, according to the tenor of said notice, I openly sold said cow at vendue to E. F., he being the highest bidder, for the sum of twenty-five dollars, from which sum I deducted thirteen dollars, being the amount of said taxes, and one dollar and fifty-five cents for charges of sale and expense of keeping said cow, and discharged said tax against said A. B. in said bills, and afterwards, on the same day, at said ———, (offered and tendered to said A. B. ten dollars and forty-five cents, the surplus or balance arising from said sale after deducting the tax and charges aforesaid, with a written account of said sale and charges, who then and there refused to receive the same.) "If the balance and account of sales are received by the delinquent tax payer, omit the words included in the brackets, and say, "I restored to said A. B. ten dollars and forty-five cents, the balance arising from said sale after deducting the tax and charges aforesaid, with a written account of said sale and charges." I therefore return the taxes assessed in said bills against said A. B. fully paid and satisfied.

C. D., { Collector of Taxes for the town
 { of ———, for 187—.

6. A collector of taxes, legally qualified, acting within the scope of his powers, under a warrant from competent authority, may justify thereby the seizure and sale of the property of such delinquents as refuse to pay the taxes assessed against them. *Caldwell v. Hawkins*, 40 Maine, 526.

7. If a person assessed, for a space of twelve days after demand, refuses or neglects to pay his tax and to show the constable or collector sufficient goods and chattels to pay it, he may arrest and commit him to jail till he pays it, or is discharged by law. R. S. Ch. 6, § 106.

8. If the assessors think there are just grounds to fear that any person so assessed may abscond before the end of said twelve days, the constable or collector may demand immediate payment, and on refusal he may commit him as aforesaid. *Ib.* § 107.

9. When a tax is made payable by instalments, and any person,

who was an inhabitant of the town at the time of making such tax, and assessed therein, is about to remove therefrom before the time fixed for any payment, the collector or constable may demand and levy the whole tax, though the time for collecting any instalment has not arrived; and in default of payment, he may distrain for it, or take the course provided in section one hundred and six. Ib. § 108.

10. When a person taxed in a town, in which he was living at the time of assessment, removes therefrom before paying his tax, such constable or collector may demand it of him in any part of the state, and if he refuses to pay it he may destrain him by his goods, and for want thereof may commit him to the jail of the county where he is found, to remain until his tax is paid; and he shall have the same power to distrain property and arrest the body in any part of the state, as in the place where the tax is assessed. Ib. § 112. See R. S. Ch. 6, § 116.

11. When any officer appointed to collect assessments by virtue of a warrant, for want of property arrests any person and commits him to jail, he shall give an attested copy of his warrant to the jailor and certify, under his hand, the sum he is to pay as his tax and the costs of arresting and committing, and for want of goods and chattels whereon to make distress, he had arrested him; and such copy and certificate shall be a sufficient warrant to require the jailor to receive and keep such person in custody, till he pays his tax, charges, and thirty-three cents for the copy of the warrant; but he shall have the same rights and privileges, as mentioned in chapter six, section one hundred and thirty-six, of the revised statutes. Ib. § 143.

Form of certificate to be given to the jailor on commitment, and to be made upon the attested copy of the officer's warrant, as above:

O——, ss. May —, 187—. I hereby certify that —— dollars and —— cents is the sum, which A. B., now committed to prison, is to pay as his proportion of the assessment within mentioned; that for want of goods and chattels whereon to make distress, I have taken his body upon the original warrant, of which this is a true and attested copy, and have committed him to the common jail

in the county aforesaid. The costs of taking and committing are _____ dollars _____ cents.

To _____, jailor of the jail in the county of O_____.

C. D., { Collector of Taxes of the town
of _____, for 187—.

12. For the commitments for non-payment of taxes, the officer shall have the same fees, as for levying executions, but his travel shall be computed only from his dwelling-house to the place of commitment. R. S. Ch. 6, § 146.

13. When a person committed for non-payment of taxes due to the state or county is discharged from confinement by virtue of any statute for the relief of poor prisoners confined in jail for taxes, the town whose assessors issued the warrant by which he was committed, shall pay the whole tax required of it. Ib. § 144.

14. When a person imprisoned for not paying his tax, is discharged therefrom, the officer committing him shall not be discharged from such tax without a vote of the town, unless he imprisoned him within one year after the taxes were committed to him to collect. Ib. § 145.

15. When new constables or collectors are chosen and sworn before the former officers have perfected their collections, the latter shall complete all their collections, as if others had not been chosen and sworn. Ib. § 109.

16. For non-payment of taxes, the collector or constable may distrain the shares owned by the delinquent in the stock of any corporation; and the same proceedings shall be had as when like property is seized and sold on execution. Ib. § 110.

17. The proper officer of such corporation, on request of such constable or collector, shall give him a certificate of the shares or interest owned by the delinquent therein, and issue to the purchaser certificates of such shares according to the by-laws of the corporation. Ib. § 111.

CHAPTER L.

OF COLLECTOR OF TAXES AND CONSTABLES.

1. When towns choose collectors, they may agree what sum shall be allowed for the performance of their duties ; but if none are chosen, or if those chosen refuse to serve or give the requisite bonds, the assessors may appoint a suitable person to act as constable and collector for the collection of taxes. R. S. Ch. 6, § 97.

2. The assessors shall require constables and collectors to give bonds, which are to be approved by them. Ib. § 100.

FORM OF COLLECTOR'S BOND.

Know all men by these presents, that we A. B., as principal, and C. D. and E. F., as sureties, of the town of _____, in _____ county, are held and firmly bound unto the inhabitants of said town, in the sum of _____ dollars ; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators by these presents. Witness our hands and seals this - _____ day of _____, 187—.

The condition of this obligation is such, that whereas said _____ has been chosen a collector of taxes for said town, for the year 187—. Now, if said _____ shall well and faithfully perform all the duties of his office, then this obligation to be void ; otherwise to remain in full force and virtue.

A. B. (seal)
C. D. (seal)
E. F. (seal)

Signed, sealed and delivered in presence of
_____.

Form of constable's bond, same as collector's, except in conditions, form of conditions of.

The condition of this obligation is such, that whereas said A. B. has been chosen constable for the town of _____ for the year 187—. Now, if the said _____ shall well and faithfully perform all the duties of said office as to all processes by him served or executed, then this obligation to be void ; otherwise to remain in full force and virtue.

A. B. (seal)
C. D. (seal)
E. F. (seal)

Signed, sealed and delivered in presence of
_____.

FORM OF APPROVAL ON ABOVE BONDS.

We hereby approve of the sum and sureties in the within bond.

_____, }
 _____, } Municipal officers of _____.
 _____, }
 _____, 187—.

3. When a tax is paid to a collector or constable, he shall give a receipt therefor on demand; and if he neglects or refuses so to do, he shall forfeit five dollars to the aggrieved party, to be recovered in any action of debt. Ib. § 101.

FORM OF RECEIPT.

Received of A. B. — dollars and — cents in full for his tax in the town of _____, for the year 187—, and in bills committed to me for collection for said year.

C. D., { Collector of Taxes for the town
 of _____, for 187—.

Oct. —, 187—.

4. If any constable or collector dies before perfecting the collection of an assessment, the assessors shall appoint, at the charge of their town, some suitable person to perfect the collection, and grant him a sufficient warrant for that purpose. Ib. § 102. See R. S. Ch. 6, § 99, 119, 121, Ch. 3, § 12.

FORM OF APPOINTMENT WHEN COLLECTOR DIES.

To _____, of _____, in the county of _____, GREETING:

Whereas A. B., collector of taxes for said town of _____, to whom the assessors of said _____, for the year 187—, committed a list of assessments, dated _____, 187—, amounting to the sum of —, hath lately deceased, before having perfected the collection and adjusted the accounts of said assessment; and whereas, upon a settlement of such part thereof as the said A. B. received in his life time, it appears that the sum of — dollars and — cents remains uncollected.

We, therefore, the assessors of said town of _____, do, by virtue of the statute of this state in such cases made and provided, hereby appoint you a collector to collect the said sum of — dollars and — cents of the several persons named in the list herewith committed to you, with a warrant in due form, each one his respective portion therein set down according to law; and herein you are to execute all such powers as were by law granted to the said deceased in and by a warrant duly granted to him for that purpose.

Given under our hands this — day of _____, A. D. 187—.

_____, }
 _____, } Assessors.
 _____, }

FORM OF APPOINTMENT WHEN NONE ARE CHOSEN, OR THOSE
CHOSEN REFUSE TO SERVE OR GIVE BONDS.

To ———, of ———, in the county of ———, GREETING :

Whereas the town of ———, at the annual town meeting, held on the ——— day of ——— 187—, failed and neglected to choose a collector of taxes. (In case the collector is chosen, but refuses to serve or give bonds, say)—Whereas A. B., duly chosen at the annual town meeting held on the ——— day of ———, 187—, in the town of ———, collector of taxes for the year 187—, refuses to serve, or give the requisite bonds (as the case may be.)

We, the assessors of said town of ———, do, by virtue of the statute of this state in such case made and provided, hereby appoint you collector of taxes for said town for the year 187—, and you are to execute all such powers as fully as if you were duly elected a collector of taxes by the legal voters of said town of ——— for the year aforesaid.

Given under our hands this ——— day of ———, A. D. 187—.

—————, }
—————, } Assessors,
—————, }

5. Collectors appointed as above must give bonds as when elected. The appointment and oath must be recorded as in case of a choice by the town. Form of warrants to them the same as in Ch. 42.

6. All plantations ordered by the legislature to pay any portion of the public taxes, are hereby vested with all the powers so far as relates to the choice of constables and collectors as requiring bonds from them, as towns are. R. S. Ch. 6, § 103.

6. When a person duly taxed in any town or parish, dies before its payment, or removes therefrom to any other town or place in the state ; and when an unmarried woman duly taxed as aforesaid, intermarries before the payment thereof, the constable or collector may sue for the tax in his own name, and recover it in an action of debt ; but shall recover no costs, unless he demanded it before bringing the action. Ib. § 113.

FORM OF DECLARATION IN ABOVE ACTION.

To answer to A. B., of ———, in the county of ———, collector of taxes for said town for the year 187—, duly appointed and sworn, in a p'ea of debt, for that the said defendant, in the year aforesaid, resided at said ———, and was then and there duly rateable, and was accordingly, by the assessors of the said town of ———, duly

rated and assessed for state, county and town taxes, the sum of — dollars — cents, and which rates, among others, were there, by the said assessors, viz., on the — day of —, in the same year, committed to the plaintiff to collect; of all which the said defendant, then and there had notice, and was required to pay the same, but neglected so to do; and afterwards, viz., on the — day of 187—, removed from the said town of —, to the town of —, in the county of —, and state aforesaid, the said taxes or rates against him being wholly unpaid, whereby an action hath accrued to the plaintiff to demand and have of the said defendant the said sum of — dollars and — cents, which the said defendant owes and unjustly retains; yet the said defendant, though often requested, hath not paid the said sum of — dollars and — cents, but refuses so to do.

7. When the owner of improved lands living in this state, but not in the town where the estate lies, is taxed, and neglects for six months after the lists of assessments are committed to an officer for collection, to pay his tax, such officer may distrain him by his goods and chattels, and for want thereof, commit him to jail in the county where he is found; or after two months written notice, he may sue him for such tax in his own name in an action of debt. Ib. § 115.

FORM OF NOTICE.

To A. B., of —, in the county of —:

You are hereby notified that a tax of — dollars and — cents, assessed against you on your improved lands, situate in the town of —, viz., (here describe the land) and in bills committed to me for collection is unpaid; that if not paid within two months from this date I shall sue you for the same in an action of debt.

C. D., { Collector of Taxes for the town
of —, for 187—.

FORM OF DECLARATION IN SAID ACTION.

To answer to C. D., of —, in the county of —, collector of taxes for said town for the year 187—, duly appointed and sworn, in a plea of debt, for that the said defendant, in the year aforesaid, was the owner of certain improved lands situate in said town of —, and then and ever since living in this state, and not in the town where the said estate lies, which is described as follows, (here give description); which real estate was taxable, and was accordingly, by the assessors of the said town of —, duly rated and assessed for the state, county and town taxes, the sum of — dollars and cents; and which rates or taxes, among others were there, by the

said assessors, viz., on the — day of —, in the same year, committed to the plaintiff to collect; of which the said defendant, then and there had notice, and has neglected for two months after written notice given him by the plaintiff, to pay said taxes, the said taxes or rates against him as aforesaid, being then and now wholly unpaid, whereby an action had accrued to the plaintiff to demand and have of the said defendant the sum of — dollars and cents, which the said defendant owes and unjustly retains. Yet, &c.

8. Any collector impeded in collecting taxes, in the execution of his office, may require proper persons to assist him in any town where it is necessary, and any person refusing when so required, shall, on complaint, pay not exceeding six dollars at the discretion of the justice before whom the conviction is had, if it appears that aid was necessary; and on default of payment, the justice may commit him to jail for forty-eight hours. *Ib.* § 117.

FORM OF COMPLAINT FOR REFUSING AID.

To N. D., Esquire, one of the trial justices within and for the county of —.

A. B., of —, in the said county of —, upon his oath complains, that E. F., of — at —, in the county of —, being then and there required by the said A. B., a collector of taxes for the town of —, in the county of —, in the name of the state of Maine, to assist him in the execution of his office, the said E. F. then and there being a proper person to render such assistance, to wit., in apprehending one H. S. on a warrant duly issued to said A. B. by the assessors of —, in said county, for the collection of taxes in bills by said assessors duly committed to said A. B. to collect, and in which bills were lists of assessments against the said H. S. due and unpaid, and said aid being then and there necessary, did then and there neglect and refuse to assist said A. B., collector of taxes as aforesaid, when required as aforesaid, to the great obstruction in collecting said unpaid assessments and in effecting said arrest, and to the great obstruction of public justice, against the peace of said state, and contrary to the form of the statute in such case made and provided. He therefore prays that the said E. F. may be apprehended and held to answer to said complaint, and further dealt with relative to the same as law and justice may require.

Dated at H— aforesaid this — day of —, in the year of our Lord one thousand eight hundred and seventy—.

A. B.

STATE OF MAINE.

O—, ss. —, 187—. Then the said A. B. made oath to the truth of the foregoing complaint.

Before me,

N. D., Trial Justice.

Form of warrant same as in other cases.

9. Every collector of taxes shall once in two months at least exhibit to the municipal officers, and where there are none, to the assessors of his town, a just and true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts for money by him paid; and if he neglects to do so, he shall forfeit to the town two and a half per cent. on the sums committed to him to collect. Ib. § 118.

10. When a collector, having taxes committed to him to collect, has removed, or, in the judgment of the municipal officers, assessors, or treasurer of a town, or committee or treasurer of a parish, is about to remove out of the state, before the time set in his warrant to make payment to such treasurers; or when the time has elapsed, and the treasurer has issued his warrant of distress, in either case, said officers or committee of such parish, may call a meeting of such town, or parish, to appoint a committee to settle with him for the money he has received on his tax bills, demand and receive of him such bills, and discharge him therefrom, and said meeting may elect another constable or collector; and the assessors shall make out a new warrant and deliver it to him with said bills, to collect the sums due thereon, and he shall have the same power in their collections as the original collector. Ib. § 119.

11. If such collector or constable refuses to deliver the bills of assessment, and pay all moneys in his hands, collected by him, when duly demanded of him, he shall pay two hundred dollars to the use of the town or parish, as the case may be, and be liable to pay what remains due on said bills of assessment. Ib. § 120.

12. When a constable or collector of taxes dies, becomes insane, has a guardian, or by bodily infirmities, is incapable of doing the duties of his office before completing the collection, the assessors may appoint some suitable person a collector to perfect such collection, and grant him a warrant for the purpose; and he shall have the same power as the disqualified collector or constable; but no person shall be so appointed without his consent; and in these cases, the assessors may demand and receive the tax bills of

any person in possession of them, and deliver them to the new collector. Ib. § 121.

13. When it appears that such insane or disqualified constable or collector has paid to the treasurer a larger sum than he had collected from the persons in his list, the assessors in their warrant to such new constable or collector, shall direct him to pay such sum to the guardian of such insane, or to such disqualified constable or collector. Ib. § 122.

14. The state treasurer shall issue a warrant of distress, signed by him, against any constable or collector, to whom a tax has been committed for collection, who is negligent in paying into the public treasury the money required within the time limited by law ; and direct it to the sheriff of the county in which such negligent officer lives, or to his deputy, returnable in sixty days from its date, to cause the sum due to be levied, with interest thereon from the day fixed for the payment, and fifty cents for the warrant, by distress and sale of such deficient officer's real or personal estate, returning any overplus there is, and for want thereof, to commit him to jail till he pays it ; and the sheriff is bound to obey such warrant. Warrants not satisfied may be renewed for the amount unpaid, to be of like validity and executed in like manner. Ib. § 123.

15. When the time fixed by law for collecting any state tax has expired, and it is unpaid, the state treasurer shall, at the request of the municipal officers of any town, issue his execution against the collector thereof. Ib. § 124.

16. If a collector of any town fails to pay the county tax for forty days after the time fixed therefor, the county treasurer shall issue his warrant against him in due form of law, returnable in three months from its date, directed to the sheriff or his deputy, and requiring him to collect the tax with six per cent. interest thereon from the time it was payable, fifty cents for the warrant and his own legal fees. Ib. § 125.

17. If a deficient constable or collector has no estate which can be distrained, and his person cannot be found within three months after a warrant of distress issues from the state treasurer ; or if

being committed to jail, he does not within three months satisfy it, his town shall, within three months after said three months, pay to the state treasury the sums due from him. *Ib.* § 126.

18. The assessors having written notice from such treasurer of the failure of their constable or collector, shall forthwith, without any further warrant, assess the sum so due upon the inhabitants of their town as the sum so committed was assessed, and commit it to another constable or collector for collection; and if they neglect so to do, the treasurer of the state shall issue his warrant against them for the whole sum due from such constable or collector, which shall be executed by the sheriff or his deputy, as other warrants issued by such treasurer. If after such second assessment, the tax is not paid to the treasurer within three months from the date of its commitment, the treasurer may issue his warrant to the sheriff of the county requiring him to levy it on real and personal property of any inhabitant of the town, as hereinafter provided. *Ib.* § 127.

19. Such deficient collector or constable shall at all times be answerable in an action by such inhabitants for all sums they were obliged to pay, by means of his deficiency, and for all consequent damages. *Ib.* § 128.

20. If any collector or constable of a town, or parish, dies without settling his accounts of taxes committed to him to collect, his executor or administrator, within two months after his acceptance of the trust, shall settle with such assessors for what was received by him in his lifetime; with which such executor or administrator is chargeable as the deceased would be if living; and if he fails so to settle, when he has sufficient assets in his hands, he shall be chargeable with the whole sum committed to the deceased for collection. *Ib.* § 129.

21. If the constable or collector of any town, or parish, to whom taxes have been committed for collection, neglects to collect and pay them to the treasurer named in the warrant of the assessors by the time therein stated, such treasurer shall issue his warrant, returnable in ninety days, to the sheriff of the county or his deputy, who are directed to execute it, and in substance as follows:

"A. B., treasurer of the _____ of _____, in said county, to the sheriff of the county of _____, or his deputy, GREETING.

"Whereas, C. D., of _____ aforesaid, (addition) on the _____ day of _____, being a _____ of taxes granted and agreed on by the _____ aforesaid, had a list of assessments duly made by the assessors of the _____ aforesaid, amounting to the sum of _____, committed to him with a warrant under their hands, directing and empowering him to collect the several sums in the said assessment mentioned, and pay the same to the treasurer of _____ aforesaid by the _____ day of _____, but the said C. D. has been remiss in his duty by law required, and has neglected to collect the several sums aforesaid, and pay them to the treasurer of the _____ aforesaid; and there still remains due thereof the sum of _____, and the said C. D. still neglects to pay it: You are hereby, in the name of the state, required forthwith to levy the aforesaid sum of _____, by distress and sale of the estate, real or personal, of the said C. D., and pay the same unto the treasurer of the said _____, returning the overplus, if any, to the said C. D. And for want of such estate to take the body of the said C. D., and him commit to the jail in the county aforesaid there to remain until he has paid the sum of _____, with forty cents for this warrant, together with your fees, or is otherwise discharged therefrom by order of law; and make return of this warrant to myself, or my successor, as treasurer of said _____, within ninety days from this time, with your doings therein.

"Given under my hand this _____ day of _____, in the year one thousand eight hundred and _____."

_____ Treasurer of _____." Ib. § 130.

22. The above form with such changes as are required to meet the facts in each case, is applicable for the form of warrants mentioned in sections 123 and 124, of. Ch. 6, R. S. and contained in this chapter.

23. On each execution or warrant of distress issued by the state treasurer, or the treasurer of a county, town, or parish, against a constable or collector, and delivered to a sheriff or his deputy, he shall make return of his doings unto such treasurer, within a reasonable time after the return day therein mentioned, with the money, if any, that he has received by virtue thereof; and if he neglects to comply with any direction of such warrant or execution, he shall pay the whole sum mentioned therein. When it is returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for the sum due on the return of the first; and so as often as occasion occurs. A reasonable time after the

return day, shall be computed at the rate of forty-eight hours for every ten miles distance from the dwelling house of the sheriff or his deputy to the place where the warrant is returnable. Ib. § 131.

24. Such treasurers may make out their warrants directed to a coroner of the county, when a sheriff or deputy is deficient as aforesaid, requiring him to distrain therefor upon his real or personal estate; and the coroner is required and empowered to execute such warrants as a sheriff does on deficient constables and collectors. Ib. § 132.

25. Any officer selling personal property distrained under a warrant from such treasurers against a deficient constable or collector, shall proceed as in the sale of such property on execution. Ib. § 133. See R. S. Ch. 84.

26. When a warrant of distress from such treasurers is levied on the real estate of a deficient constable, collector, sheriff or deputy sheriff, for the purpose of being sold, notice of the sale, and of the time and place of sale, shall be given fourteen days before such day, by posting advertisements in two or more public places in the town or place where the estate lies, and in two adjoining towns. Ib. § 134.

27. At that time and place, the officer having such warrant shall sell, at public auction, so much of such estate, in common and undivided with the residue, if any, as is necessary to satisfy the sum named in the warrant, with all legal charges; and execute to the purchaser a sufficient deed thereof, which shall be as effectual to all intents and purposes, as if executed by the deficient owner. Ib. § 135.

28. If the proceeds of such sale do not satisfy such sum and legal charges, the treasurer, who issued the warrant, shall issue an alias warrant for the sum remaining due; and the officer executing it shall arrest such deficient officer, and proceed as on an execution for debt; and such deficient officer shall have the same rights and privileges as a debtor arrested or committed on an execution in favor of a private creditor. Ib. § 136.

29. When any constable or collector of taxes is taken on

execution under this chapter, the assessors may demand and receive of him a true copy of the assessments, which he received of them and then has in his hands unsettled, with the evidence of all payments made on them ; and if he complies with this demand, he shall receive such credit as the assessors, on inspection of the assessment, adjudge him entitled to, and account for the balance ; but if he refuses to comply, he shall forthwith be committed to jail by the officer who so took him, or by a warrant from a justice of the peace, to remain there till he complies ; and the assessors shall take and use copies of the record of assessments instead of the copies demanded of him. Ib. § 137.

30. The same town or parish may proceed to the choice of another collector, at any time, to complete the collection of the assessments ; who shall be duly sworn and give the security required of the first collector ; and the assessors shall deliver to him the uncollected assessments, with a proper warrant for their collection ; and he shall proceed as before prescribed. Ib. § 138.

31. When the tax of any person named in said assessment does not thereby appear to be paid, but such person declares that it was paid to the former collector, the new collector shall not proceed to distrain or commit him, without a vote of such town or parish first certified to him by its clerk. Ib. § 139.

32. When a town neglects to choose any constable or collector, to collect any state or county tax, the sheriff of the county is hereby authorized and directed to collect it, on receiving an assessment thereof, with a warrant under the hands of the assessors of such town duly chosen, or appointed by the county commissioners, as the case may be. Ib. 140.

33. When plantations neglect to choose constables or collectors, or if those chosen and accepting their trust neglect their duty, such plantations shall be proceeded with as in the case of deficient towns ; and such deficient constables or collectors shall be liable to the same penalties, and be removed in the same manner, as deficient constables and collectors of towns. Ib. 141.

34. The sheriff or his deputy, on receiving such assessment and warrant for collection, as is mentioned in the two preceding

sections, shall forthwith post in some public place in the town or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of such taxes till after thirty days therefrom; and any person paying his tax to such sheriff within that time, shall pay five per cent. over and above his tax for his fees, and no more; but those who do not pay within that time, shall not be distrained or arrested by such officer, as by collectors; and he may require aid for the purpose; and have the same fees for the travel and service of the sheriff, as in other cases of distress made. *Ib.* § 142.

FORMS OF RETURNS ON TREASURER'S WARRANTS OF DISTRESS.

1. LEVY ON GOLD AND SILVER.

_____, ss. 187—. By virtue of the within warrant, I have taken the sum of _____ dollars, money of the within named C. D., the collector of taxes named within, and have paid thereof to the within named treasurer, the sum of _____ dollars in full satisfaction of the sum within due; and have retained thereof the sum of _____ dollars for my fees, and I return this warrant satisfied in full.

_____ Sheriff.

2. LEVY ON BANK BILLS ACCEPTED AT PAR.

O_____, ss. 187—. By virtue of the within warrant, I have taken _____ dollars in bank notes, of the within named C. D., the collector of taxes within named, and have paid thereof to the within named treasurer, who accepted the same at their par value, the sum of _____ dollars, in full satisfaction of the sum within due, and I have retained the sum of _____ dollars, at their par value, for my fees, and I return this warrant satisfied in full.

_____ Sheriff.

3. LEVY ON PERSONAL ESTATE.

O_____, ss. June 13, 187—. By virtue of this warrant, on the first day of June, 187—, I seized and took as the property of the within-named C. D., the collector of taxes within-named, one horse, and having safely kept the same horse for the space of four days, and having on the fifth day of June, 187—, given public notice of the time and place of the intended sale, by posting up notifications thereof in two public places in the town of _____, to wit, one at the inn of _____, and one at store of _____, more than forty-eight hours before the time of sale, and pursuant to said notifications, on the eighth day of the same June, at one o'clock in the afternoon, at the inn of _____, in said _____. I sold said horse at public auction, to I. S., he being the highest bidder

therefor, for the sum of eighty dollars, from which I have taken the sum of _____ dollars and _____ cents for my fees, and the residue being _____ dollars and _____ cents, I have applied in full satisfaction of this warrant. (If the balance is not sufficient to satisfy in full then say) and have applied the balance in part satisfaction of this warrant, and being unable to find any other goods, chattels, or lands, of the said C. D. within my precinct, I have this thirteenth day of June aforesaid taken the body of the said C. D. and committed him to the jail in _____, in said county, and at the same time left an attested copy of this warrant with the keeper of said jail, with a written certificate thereon of the amount due.

_____ Sheriff.

Fees.

Levy.

Travel, _____ miles.

Copy _____ pages _____

\$____,

4. FORM OF NOTICE OF SALE OF PERSONAL ESTATE.

SHERIFF'S SALE.

O_____, ss. Taken on warrant of distress duly issued by A. B., treasurer of the town of _____, in said county, or by A. B., treasurer of said county, or state (as the case may be), wherein C. D. is a delinquent tax collector and payer of lists of assessments duly made by the assessors of _____, in said county and by them duly committed to him with a warrant under their hands, directing and empowering him to collect and pay the same to the treasurer of said town of _____, or to the county treasurer of said county, or the State treasurer of the State of Maine (as the case may be), and will be sold at public auction, to the highest bidder, on _____, the _____ day of _____, A. D. 187____, at _____ o'clock, in the _____ noon, at _____ in _____, in said county of Oxford, the following described personal property, to wit (here name the articles).

Dated at _____, in said county, this _____ day of _____ A. D. 187____.

_____ Sheriff.

5. FORM OF NOTICE OF SALE OF REAL ESTATE.

SHERIFF'S SALE.

O_____, ss. By virtue of a warrant of distress duly issued by A. B., treasurer of the town of _____, in said county, or by A. B., treasurer of said county, or A. B., treasurer of the State of Maine (as the case may be) wherein C. D. is a delinquent collector and payer of taxes of the town of _____ in said county, I have taken certain real estate lying in said town of _____, and belonging to C. D., and being the farm whereon the said C. D. now lives, and the same that is described in a deed thereof from A. W. to the said C. D., recorded in the Registry of Deeds for said county, Book 100, Page 273, and I shall sell so much of said real estate, in common

and undivided with the residue, if any, as may be necessary to satisfy the sum of _____ dollars and _____ cents, the amount of the delinquency named in said warrant against C. D., and legal charges, at public auction, on the fifteenth day of June, 187—, at one o'clock in the afternoon, at the inn of _____, in said town of _____.

June 1st, 187—.

_____ Sheriff.

Copies of the above notice must be posted in two or more public places in the town or place where the estate lies, and in two adjoining towns fourteen days before the day of sale.

6. FORM OF RETURN OF SALE OF REAL ESTATE ON WARRANT.

O——, ss. June 15, 187—. By virtue of this warrant of distress, on the first day of June, I levied on certain real estate lying in the town of _____, in said county, belonging to C. D., within-named, and being the farm whereon the said C. D. now lives, and the same that is described in a deed thereof from A. W. to the said C. D., recorded in the Registry of Deeds for said county, Book 100, Page 273. And on the same first day of June, being fourteen days before the time appointed for the sale hereinafter mentioned, I caused notifications thereof to be posted up at the following public places, to wit, at the post-office and at the store of _____ in the town of _____, aforesaid, the town where said real estate lies, and at the inn of W. N. and at the store of S. W. in the town of _____, and at the inn of S. H., and at the store of G. M., in the town of _____, said last named towns being two adjoining towns to the town wherein said real estate lies; and on the fifteenth day of June, A. D. 187—, at one o'clock in the afternoon at the inn of _____ in said town of _____, the time and place appointed for said sale as aforesaid, I sold at public auction one-half of said farm to H. S. in common and undivided, it being necessary to sell so much to satisfy the sum of _____ dollars and _____ cents, the amount of the delinquency named in said warrant and the legal charges of sale, as no person would pay said amount and charges for a less quantity of said farm; and I have made, executed, acknowledged and delivered to the said H. S. a good and sufficient deed of said one-half of said farm in common and undivided. From the proceeds of said sale I have deducted the sum of _____ dollars and _____ cents for my fees, and the balance being _____ dollars, the amount of the within delinquency, I paid to the within-named treasurer, and return this warrant fully satisfied.

_____ Sheriff.

Fees.

Levy.

Travel, _____ miles.

Advertising.

Deed.

Acknowledgment _____

\$

7. FORM OF DEED OF ABOVE REAL ESTATE.

Whereas I, H. B., of ———, in the county of ——— and State of Maine, a sheriff in and for said county, having on the first day of June, in the year eighteen hundred and seventy——, by virtue of a warrant of distress duly issued to me by A. B., treasurer of the town of ———, wherein C. D. was a delinquent collector and payer of taxes of the town of ———, in said county, in the sum of ——— dollars and ——— cents, levied upon certain real estate lying in said town of ———, and belonging to said C. D. and being the farm whereon the said C. D. then lived, and the same that is described in a deed thereof from A. W. to the said C. D., recorded in the Registry of Deeds for said county, Book 100, Page 273, and having on the same first day of June, being fourteen days before the time appointed for the sale hereinafter mentioned, caused notifications thereof to be posted up at the following public places, to wit, at the post-office and at the store of ——— in the town of ———, aforesaid, the town where said real estate lies, and at the inn of W. V. and at the store of S. W. in the town of ———, and at the inn of S. H. and at the store of G. M. in the town of ———, said last named towns being two adjoining towns to the town wherein said real estate lies; and on the fifteenth day of June, A. D. 187—, at one o'clock in the afternoon at the inn of ——— in said town of ———, the time and place appointed for said sale as aforesaid, I sold at public auction one-half of said farm to H. S. in common and undivided, it being necessary to sell so much to satisfy the sum of ——— dollars and ——— cents, the amount of the delinquency named in said warrant and the legal charges of sale, as no person would pay said amount and charges for a less quantity of said farm.

Now, know all men by these presents, that in consideration of the said sum of ——— dollars and ——— cents, to me paid by the said H. G., the receipt whereof I do hereby acknowledge, I have given, granted, bargained and sold, and do by these presents give, grant, sell and convey to the said H. G., his heirs and assigns, forever, one half of the aforesaid farm in common and undivided. To have and to hold the same to the said H. G., his heirs and assigns, to his and their use forever as effectually to all intents and purposes, as if deeded by the said C. D.

In witness whereof I, the said H. B., have hereunto set my hand and seal this fifteenth day of June, in the year of our Lord one thousand eight hundred and seventy ———.

Signed, sealed and delivered,

in presence of

—————, ———,

H. B. [L.s]

O———, ss. June 15, 187—. Then personally appeared, the above H. B., and acknowledged the above instrument by him subscribed to be his free act and deed.

Before me,

J. P., Justice of the Peace.

CHAPTER II.

OF TOWN TREASURERS WHEN APPOINTED COLLECTORS.

1. The inhabitants of a town may in March annually appoint their treasurer a collector of taxes ; and he may then appoint under him such number of assistants as are necessary ; who shall give bond for the faithful discharge of their duties in such sum and with such sureties, as the municipal officers approve ; and he shall have like powers, as are vested in collectors chosen for that purpose. R. S. Ch. 6, § 147.

2. At any meeting, when they vote to raise a tax, a town may agree on the abatement to be made to those who voluntarily pay their taxes to the collector at certain periods, and the times within which he is so entitled ; and a notification of such votes, and the time when such taxes were committed, shall be posted up by the treasurer, in one or more public places in his town, within seven days after such commitment ; and all who so pay their taxes shall be entitled to such abatement ; and all taxes, not so paid, shall be collected by the collector or his deputy, under the other provisions of this chapter. Ib. § 148.

3. THE FORM OF NOTICE.

TREASURER'S NOTICE.

The treasurer of the town of ——— hereby gives notice, that by a vote of said town, a discount of ——— per cent. will be made to all persons who voluntarily pay their taxes to the collector of taxes of said town, on or before the ——— day of ——— next. Said taxes were committed to me on the tenth day of July last past.
July 12th, 187—.

A. B., Treasurer of ———.

4. The assessors of any town, which at its annual meeting, regulates the collection of its taxes agreeably to the provisions of the two preceding sections, shall assess their taxes in due form, and deposit them in the hands of the treasurer for collection, with their warrant for that purpose, after he and his deputies are duly qualified. Ib. § 149.

5. All the powers granted in this chapter to treasurers, who are appointed collectors of taxes, shall be extended till the collection of any tax committed to them is completed, notwithstanding the year for which they were appointed is elapsed. Ib. § 150.

6. The municipal officers of towns shall require the treasurer thereof to give bond, with sufficient sureties, for the faithful performance of the duties of his office, and if he neglects or refuses to do so, it shall be deemed a refusal to accept the office, and the town shall proceed to a new choice, as in case of vacancy. Ib. § 151.

7. FORM OF TREASURER'S BOND.

Know all men by these presents, that we, ———, of ———, in the county of ———, as principal, and ——— and ———, both of ——— aforesaid, as sureties, are held and firmly bound to the inhabitants of the town of ———, in the sum of ——— dollars, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this ——— day of ———, A. D. 186—.

The condition of this obligation is such, that whereas said A. B., treasurer of said town, has been appointed collector of taxes of said town for the year 187—. Now if the said A. B. shall well and truly perform all the duties of said office, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered,
in presence of

[L.S.]
[L.S.]
[L.S.]

—————, —————,

FORM OF APPROVAL.

We hereby approve of the sureties in the within bond.

——— 187—.

——— } Municipal Officers
——— } of ———.

8. Every treasurer shall render an account of the state of the finances of his town, and exhibit all the books and accounts pertaining to his office, to the municipal officers thereof, or to any committee appointed by it to examine said accounts when required; and such officers shall examine such treasurer's accounts as often as once in three months. Ib. § 152.

9. The treasurer of any town, who is also collector, may issue his warrant to the sheriff of any county, or to his deputy, or a constable of his town, directing him to distrain the person or property of any person, who is delinquent in paying his taxes, after

the expiration of the time fixed for payment by vote of the town; which warrant shall be of the same tenor as that prescribed to be issued by municipal officers or assessors to collectors, changing such parts as ought to be changed, returnable to the treasurer in thirty days. Ib. § 153.

10. When such treasurer thinks there is danger of losing by delay a tax assessed on any individual, he may distrain his person or property before the expiration of the time fixed by the vote of the town. Ib. § 154.

11. Before such officer serves any such warrant, he shall deliver to the delinquent, or leave at his last and usual place of abode, a summons from said collector and treasurer, stating the amount of tax due, and that it must be paid within ten days from the time of leaving such summons, with twenty cents for officer for leaving the summons; and if not so paid, the officer shall serve such warrant in the same manner as collectors of taxes are authorized to do, and shall receive the same fees as for levying executions in personal actions. Ib. § 155.

FORM OF SUMMONS.

To A. B. of _____. The taxes assessed against you in the town of _____ for the year _____, and committed to me for collection, and due, are _____ dollars and _____ cents. You are hereby notified that the same must be paid to me, within ten days from this _____ day of _____, 187—, the date of leaving this summons, with the additional sum of twenty cents for the officer leaving this summons.

_____ { Treasurer and Collector
of _____.

SPECIAL PROVISIONS.

12. The affidavit of any disinterested person as to posting notifications required for the sale of any land to be sold by the sheriff or his deputy, constable or collector, in the execution of his office, may be used in evidence in any trial to prove the fact of notice; if such affidavit, made on one of the original advertisements, or on a copy of it, is filed in the registry of the county or district where the land lies, within six months. Ib. § 156.

13. When the estate of an inhabitant of a town, or parish, who is not an assessor thereof, is levied upon and taken as mentioned in section seventy, he may maintain an action against

such town or parish, and recover the full value of the estate so levied on, with interest at the rate of twenty per cent. from the time it was taken, with costs; and such value may be proved by any other legal evidence, as well as by the result of the sale under such levy. Ib. § 157.

14. All warrants lawfully issued by a state or county treasurer shall be made returnable in three months, and may be renewed for the collection of what appears due upon them when returned, including expenses incurred in attempting to collect them; and the power and duty of the sheriff shall be the same in executing such alias or pluries warrant, as the original warrant. Ib. § 158.

CHAPTER LII.

OF WARRANTS FOR TOWN MEETINGS AND OATHS OF OFFICERS.

1. WARRANT FOR ANNUAL TOWN MEETING.

To W. D. R., a constable of the town of ———, in the county of ———,
GREETING.

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of said town of ———, qualified by law to vote in town affairs, to meet at the town house, in said town, on the ——— day of ———, at ——— o'clock in the ———noon, to act on the following articles, to wit:—

First, To choose a moderator to preside at said meeting.

Second, To choose, &c., &c., [here insert such articles as are necessary.]

The selectmen hereby give notice that they will be in session for the purpose of revising and correcting the list of voters, at ———, at ——— o'clock in the ———noon on the day of said meeting.

Given under our hands at ———, this ——— day of ———, A. D. 186—.

—————, }
 —————, } Selectmen of ———.
 —————, }

2. FORM OF WARRANT FOR GENERAL ELECTION.

To W. D. R., constable of the town of N.

You are hereby required, in the name of the State of Maine, to notify and warn the inhabitants of the town of N., qualified according to the constitution, to assemble at the town house on the — day of —, at — o'clock in the — noon, to give in their votes for governor, senators and representative, to represent them in the Legislature of this state.

The selectmen will be in session at —, on the — day of —, at — o'clock in the — noon, for the purpose of correcting the list of voters.

Dated at —, the — day of —, A. D. 186—.

— — —, }
— — —, } Selectmen of —.

3. In case the selectmen unreasonably refuse to call a town meeting, any ten or more legal voters therein may apply to a justice of the peace in the county, who is hereby authorized to issue his warrant for calling such meeting. R. S. Ch. 3, § 4.

4. FORM OF APPLICATION TO CALL A TOWN MEETING.

To M. W., a justice of the peace, for the county of O—.

The undersigned, being ten legal voters in the town of K., in said county, respectfully represent that on the — day of, &c., application in writing, by more than — legal voters in said town, was made to the selectmen, requesting them to call a meeting of the inhabitants of said town, qualified to vote in town affairs, and to insert in the warrant for the same the following article, viz. . To see, &c.

But they have unreasonably refused to call such meeting. They therefore pray you to issue a warrant for calling a meeting of the inhabitants of said town for the purpose above specified.

K—, 186—. [To be signed by ten or more.]

2. FORM OF WARRANT.

STATE OF MAINE.

O—, ss. To W. D. R., a constable for the town of K., in said county.
GREETING.

[L. s.] Whereas, application has been made to me, M. W., a justice of the peace for said county, by ten (or more) legal voters in said town of K., to call a meeting of the inhabitants of said town, qualified to vote in town affairs, to act upon the articles hereinafter mentioned; and whereas, it has been made to appear to me that the selectmen of said town, upon a request in writing, duly made to them for that purpose, have unreasonably refused to call a meeting upon said article:

Therefore, you are hereby required to notify and warn the inhabitants of K. aforesaid, qualified to vote in town affairs, to meet at the town house, in said town, on the — day of —, at — o'clock in the — noon, to act upon the following articles, to wit:

To choose a moderator to preside at said meeting.

To, &c.

Given under my hand and seal, this — day of —, A. D. 186—.

M. W., Justice of the Peace.

5. CONSTABLE'S RETURN.

—, A. D. 186—. Pursuant to the within warrant, I have notified and warned the inhabitants of said town, qualified as therein expressed, to meet at the time and place, and for the purposes therein named, by posting up an attested copy of the within warrant at —, being a public and conspicuous place in said town, on the — day of —, being seven days before the meeting.

W. D. R., Constable of —.

The above return is applicable to any warrant for town meeting.

6. FORM OF WARRANT TO NOTIFY OFFICERS TO TAKE OATH.

To the constable of the town of —.

The following is a list of persons who were this day chosen into office, at a meeting of the inhabitants of the town of —, and of whom an oath is by law required, and the offices to which they were respectively chosen, to wit:—

A. B., C. D., surveyors of highways.

&c., &c.,

You are hereby required, in the name of the State of Maine, within three days from the date hereof, to summon each of the persons herein named to appear before the town clerk within seven days from the time you shall give such notice, and take the oath of office by law required.

Hereof fail not, and make due return of this warrant, and of your doings thereon, to me, within ten days from the date hereof.

Given under my hand this — day of —, A. D. 187—.

W. A., Town Clerk of —.

7. FORM OF RETURN.

March —, 187—. Agreeably to the within warrant, I have notified the persons therein named to appear and take the oath of office, as herein directed.

A. B., Constable of —.

8. OATH OF MODERATOR.

You, A. B., having been chosen moderator of this meeting, do solemnly swear that you will faithfully and impartially discharge all the duties of said office. So help you God.

9. OATH OF TOWN CLERK.

You, A. B., having been elected town clerk of the town of —, do swear that you will truly record all votes passed in this or any other town meeting which may be held in this town during the ensuing year, and until another shall be chosen and sworn in your stead, and also that you will faithfully discharge all other duties of said office. So help you God.

10. OATH FOR ALL OTHER TOWN OFFICERS.

You having been duly elected — of the town of —, do swear that you will faithfully and impartially perform the duties assigned you by law. So help you God.

11. OATH TO ASSESSORS, BEFORE TAKING A GENERAL VALUATION.

You, A. B. and C., assessors of the town of — do severally and solemnly swear that you will perform all the duties required of you, without favor or prejudice, and that you will, according to your best skill and judgment, appraise all real and personal estate, according to its just value. So help you God.

11. The town clerk may appoint a citizen his deputy, who shall be sworn before entering upon his duties.

FORM OF APPOINTMENT.

I hereby appoint ——— to perform the duties of town clerk as set forth in section two of chapter ninety-one of the Revised Statutes, in the town of ———, during my absence from the clerk's office.

A. B., Clerk of the town of ———.

CHAPTER LIII.

ABATEMENT OF TAXES.

1. FORM OF APPLICATION TO ASSESSORS FOR ABATEMENT.

To the assessors of the town of ———, in the county of ———.

I, A. B., of said town of ———, respectfully represent that the valuation of my personal and real estate and assessment of taxes on the same, in said town, as taken and made by the assessors of said town, for the year 18—, are as follows, viz.: Valuation of personal estate, \$——, real estate, \$——. Highway tax assessed against me on personal estate, \$——, on real estate, \$——. Money tax assessed against me on personal estate, \$——, on real estate, \$——. I, the said A. B., hereby respectfully make application to you, the said assessors, for a just and proper abatement of the above taxes, for the following reasons, viz.: 1st, because on the first day of April, A. D. 18—, I did not have, possess or own exceeding \$——, taxable personal estate, nor exceeding \$——, taxable real estate; that my personal and real estate are overrated; that I did, on said first day of April, present and exhibit on oath to the assessors of said ———, as by law required, a true and perfect list of my poll and taxable estate, real and personal, of which I was possessed on said first day of April, 18—, (if the list was not offered on first day of April, assign reason and say) that I was unable on the said first day of April, 18—, on account of my own sickness, or absence from the State (as the case may be) to be personally present to present and exhibit to said assessors for said year 18—, on oath, a true and perfect list of my poll and estate, real and personal, not by law exempt from taxation. Dated at said ———, this ——— day of ———, 18—. A. B.

2. ABATEMENTS, WHEN AND HOW ALLOWED. See R. S., Ch. 6, §§ 65, 66, 67, 68, 69.

3. FORM OF APPLICATION TO COUNTY COMMISSIONERS FOR ABATEMENT OF TAXES.

To the Honorable County Commissioners within and for the county of———

Respectfully represents A. B. of ———, in said county, that his personal

estate in the town of ———, aforesaid, was valued in the valuation taken by the assessors of said town for the assessment of taxes for the year 18—, at the sum of ——— dollars, and his real estate at the sum of ——— dollars, and the assessors aforesaid, for said year, assessed your petitioner on account of said personal estate in the sum of ——— dollars and ——— cents, and on account of real estate in the sum of ——— dollars and ——— cents, in their assessment of money taxes for said year, and in their assessment of highway taxes for said year, assessed your petitioner on account of his personal estate, in the sum of ——— dollars and ——— cents, and on account of real estate, in the sum of ——— dollars and ——— cents. And your petitioner further represents that in compliance with a notice duly posted by said assessors, he did, on the first day of April, in the same year, present and exhibit on oath to the said assessors, a true and perfect list of his poll and estate, real and personal, not by law exempted from taxation, which he was then possessed of, and said assessors disregarded said list in assessing his proportion of the taxes in said town for said year 18—, (if the list was not offered on first day of April, say as the fact may be) “that I was unable on the first day of April, 18—, on account of my own sickness, or absence from the State (as the fact may be) to be present to present and exhibit to said assessors for said year 18—, a true and perfect list of my poll and estate, real and personal, not by law exempt from taxation.” And your petitioner further represents that on the first day of April, 18—, he did not have, own or possess exceeding ——— dollars in value of taxable personal estate, nor exceeding ——— dollars taxable real estate, as his said list as aforesaid exhibited will show and as in truth will appear. And your petitioner further represents, that believing that property should never be appraised above its actual value, and that no tax payer should be overrated, he has requested the assessors of said town to abate said taxes, viz., on the ——— day of ——— 18—, informing them that he was overrated and did not possess on the said first day of April, 18—, exceeding ——— dollars, in value of personal estate, nor exceeding ——— dollars in value of real estate, yet they refused to abate the said taxes or any part thereof. Your petitioner feeling himself aggrieved and wronged by said refusal and decision, appeals and applies to this Honorable Court pursuant to the statute in such case made and provided. He therefore prays your Honors, after due notice to the assessors of said town and hearing the evidence, and upon being satisfied that your petitioner was overrated in said assessments to abate said taxes or such part thereof as justice requires, and cause him to be relieved and paid out of the treasury of said town the amount of such abatements with incidental charges in accordance with the provisions of said statute, and as in duty bound will ever pray.

— — — 18—.

A. B.

CHAPTER LIV.

HIGHWAY SURVEYORS.

For appointment of, and vacancies how supplied.—See R. S., Ch. 3, § 12. For duties of—See R. S., Ch. 18, §§ 44 to 59.

1. FORM OF APPOINTMENT OF SURVEYOR.

To A. B. of the town of ———. Whereas said town at its annual meeting, held on the ——— day of ——— 187—, neglected to choose road commissioners, and to appoint the municipal officers, surveyors of highways; we the selectmen of said town, agreeably to the authority vested in us by law, do hereby appoint you a surveyor of highways in district No. 1, in said town from May 1, 187—, to April 30, 187—, and you are to possess all the powers and execute all the duties appertaining to said office.

Given under our hands this ——— day of ———, A. D. 18—.

A. B. }
C. D. } Selectmen of ———.
E. F. }

2. The surveyors to be sworn, and such oath and appointment must be recorded as in case of a choice by the town.

3. THE FORM OF ASSIGNMENT OF THE SURVEYOR'S DIVISIONS AND LIMITS.

To A. B., one of the surveyors of highways in the town of ———: The division and limits of District No 1, in the town of ———, which are to be kept in repair by you for the present year, are as follows:

Given under our hands this ——— day of ———, A. D. 18—.

A. B. }
C. D. } Selectmen of ———.
E. F. }

4. Municipal officers must assign limits to surveyors by May 10th. R. S., Ch. 18, § 43.

5. THE FORM OF COMMITTING LISTS TO SURVEYORS OF HIGHWAYS MAY BE AS FOLLOWS:

To A. B., one of the surveyors of highways of the town of ———: The following is the list of the persons, and of the sums against whose names they are set, at which they are severally assessed, to be expended in labor and materials on the highways and bridges in said town, within the limits assigned you by the assessors of said town.

You are to give a reasonable notice in writing, if required, to each person on your said list, resident in said town, of the sum he is assessed on the said list to the highways and town ways, and also forty-eight hours' notice of the times and places you shall appoint for providing materials and laboring on

the same, that each person may have opportunity to work thereon in person, or by substitute, or with his oxen, horses, cart, or plow, at the prices affixed by the town to such labor or materials, which are as follows, to wit: [here state the prices voted by the town.] And, in case of payment in money of any sum or sums thus assessed, the same you are to expend, according to your best discretion, in labor or materials for repairing the ways within your limits. You are to cause at least two-thirds of the sum committed to you on said list for making and repairing the ways, to be laid out and expended before the first day of July next, and the residue before the ———.

You are to exhibit this rate bill to the selectmen of said town on the first Monday of July next, and also at the expiration of the term for which you have been appointed, and at those times respectively render an account of all moneys that may have been expended by you on the ways; and also, at the expiration of your term of office, you are to render to the assessors a list of such persons as have been deficient, on due notice, in working out or otherwise paying their highway tax. And, if any money shall remain unexpended in your hands after the expiration of your term of office, you are to pay the same to the treasurer of said town.

Given under our hands this ——— day of ———, 18—.

A. B. }
C. D. } Assessors of ———
E. F. }

FORM OF HIGHWAY TAX LIST.

Names.	Polls.	Poll tax.	Real estate.	Personal.	Total.
A. B.	1	0,87	4,75	3,91	9,53

6. For proceedings in removing logs and lumber, &c., when left on ways. See R. S., Ch. 18, § 74.

7. FORM OF NOTICE OF SALE AT AUCTION OF PROPERTY REMOVED, TO PAY CHARGES OF REMOVAL AND SALE.

Taken by virtue of the statute in such cases made and provided, ———feet of boards, left without necessity on the public highway in district No. 1, in the town of ———, to the encumbrance and obstruction thereof, and so much thereof will be sold at public auction, at ———, in said ———, on the ——— day of ———, A. D. 187—, at ——— o'clock in the forenoon, as will be sufficient to pay the legal costs and expenses of removal and sale.
———, 187—.

J. W. } Surveyor of Highways for
Dist. No. 1 in ———.

7. FORM OF ACCOUNT OF SALE.

In pursuance to legal notice, I have taken and sold at public auction, ———feet of boards, left on the public highway in district No. 1 in the town of ———, to the encumbrance and obstruction thereof, as follows:

500 feet to I. A. for	\$4.00
250 " " P. R. "	2.00
	—
Amount of sales,	6.00

I have applied the same to pay the expense and trouble of removal and charges of sale.

———, 187—.

J. W., } Surveyor of Highways for
Dist. No. 1 in ———.

8. For proceedings of highway surveyors in rendering delinquent list. See R. S., Ch. 18, §§ 45, 48.

9. FORM OF SURVEYOR'S RETURN OF DELINQUENT TAX LIST.

To the assessors of the town of ———, for the year 187—.

I hereby render to you a list of such persons, resident in said town, as have not worked out or paid their highway taxes on lists committed to me to be worked out in highway district No. 1 in said town, for the year 187—, with the amount of the deficiency of each named on said list hereby rendered, to wit:

Name of delinquent.	Amount of deficiency.	
A ——. B ——. C ——. D ——.	\$ 10 50 5 00	

I hereby certify that I demanded said taxes and give reasonable notice in writing, if required, to each person on my said list resident in town, of the amount of his tax, and give each person forty-eight hours notice, extraordinary casualties excepted, of the times and places appointed for furnishing labor and materials at prices fixed by the town therefor, affording each an opportunity to work with his oxen, horses, cart, or plow, to the amount his tax.

——— May 1st, 187—.

J. W., } Highway Surveyor of Dist. No. ———,
in the town of ———.

A delinquent list cannot be legally rendered, unless the surveyor has given the notice and made the demand for services required by statute, and these facts must appear to authorize the assessors to put them in the assessment of taxes. 42 Me. 367.

CHAPTER LV.

TOWN LINES.

1. Perambulations, proceedings respecting them. See R. S., Ch. 3, §§ 41, 42, 43.

2. The municipal officers of the most ancient town shall give ten days' notice in writing to such officers of the adjoining towns of the time and place of meeting for perambulation.

FORM OF NOTICE.

The selectmen of the town of —, to the selectmen of the town of —:

GENTLEMEN: The subscribers, selectmen of —, being selectmen of the most ancient of said towns, hereby give you notice to meet at —, on the — day of —, at — o'clock in the forenoon, for the purpose of perambulating and running the lines between said towns, and renewing the marks and bounds, according to the revised statutes of this state.

Dated at —, this — day of —, A. D. 18—.

A. B., }
C. D., } Selectmen of —.
E. F., }

3. RETURN OF PERAMBULATION.

Agreeably to notice given to the town of —, by the town of —, to meet at —, on the — day of —, A. D. 18—, for the purpose of perambulating and running the lines between the said town, and renewing the marks and bounds, we, the subscribers, selectmen of said town, have met at the time and place, and for the purpose aforesaid, and do make the following return of our doings. (Here insert the return of doings.)

In witness whereof we have hereunto mutually set our hands, this — day — of —, A. D. 18—.

A. B., }
C. D., } Selectmen of —.
E. F., }

G. H., }
H. I., } Selectmen of —.
O. B., }

4. As the power of altering the lines of towns rests wholly with the legislature, the selectmen can only decide where the true town line is.

5. The return of perambulation should be recorded in the records of each town; and the town clerk should certify at the bottom, as follows: A true record of the original.

Attest,

A. B., Town Clerk.

6. On petition of selectmen to the supreme judicial court, commissioners will be appointed to settle disputed town lines.

FORM OF PETITION.

To the honorable justices of the supreme judicial court, to be holden at —, in and for the county of —, on the — day of —, A. D. 18—.

Respectfully represent,

The subscribers, selectmen of the town of —, in said county, that, on the — day of — last past, pursuant to a notice previously given, they met the selectmen of the town of —, in said county, for the purpose of perambulating the lines between said towns, and renewing the marks and bounds thereon, but that a controversy exists between said parties, in renewing and establishing the lines and bounds of said towns; wherefore your petitioners pray your honors that the same may be run by commissioners to be

appointed by your honors, and that your honors will appoint commissioners to run said lines, and to ascertain and determine the line or lines in dispute, and describe the same by courses and distances, and mention in their return suitable monuments or marks for the permanent establishment of such lines.

A. B., }
C. D., } Selectmen of ____.
E. F., }

7. FORM OF COMMISSIONERS' REPORT.

The undersigned, commissioners, appointed by the supreme judicial court held at _____, in and for the county of _____, on the _____ Tuesday of _____, A. D. 187—, to ascertain and determine the town lines in dispute between the towns of _____ and _____, after giving notice to all persons interested of the time and place of meeting, and after hearing all persons interested at the time and place appointed, we ascertained and determined the following described lines to be the true boundary line or lines (as the case may be) between the towns of _____ and _____, aforesaid, which line or lines (as the case may be) are described by courses and distances as follows, to wit:— (here give the line or lines by courses and distances) and have made and set stone monuments, marked T. L. at the beginning, angles and ends of the aforesaid several lines, courses and distances for the permanent establishment of such lines, and hereby make duplicate returns of our proceedings, one of which is hereby returned to the court aforesaid, and one to the office of the secretary of the State of Maine.

In witness whereof we have hereunto set our hands this _____ day of _____, A. D. 187—.

A. B., }
C. D., } Commissioners.
E. F., }

8. The validity and efficacy of the proceedings of the commissioners must be determined upon the facts appearing on the reports. *Lisbon vs. Bowdoin*, 53 Me. 324.

9. If the report does not "*ascertain* and determine" the line, the "controversy" is not terminated, and commissioners may be appointed on a new petition. *Lisbon vs. Bowdoin*, 53 Me. 324.

10. A report declaring that the commissioners do "*award* and determine" that a certain defined line "shall be the true boundary," &c., does not make it certain that they did not establish a new line, instead of *ascertaining* and *renewing* the old one, and hence is insufficient. *Lisbon vs. Bowdoin*, 53 Me. 324.

CHAPTER LVI.

TOWN WAYS AND BRIDGES.

For the statute law relative thereto, See R. S., Ch. 18.

1. FORM OF PETITION TO LAY OUT WAYS.

To the selectmen of the town of ———, in the county of ———.

Humbly shows the undersigned, that a town or private way (as the case may be) from ——— to ———, in said town, would be of great public convenience, for the use of said town, wherefore your petitioners pray that the same may be duly laid out as by the statute is provided.

Dated at ———, this ——— day of ———, A. D. 187—.

A. B.
C. D.

2. FORM OF NOTICE OF INTENTIONS TO LAY OUT ROAD.

Notice is hereby given, that it is the intention of the selectmen of the town of ———, upon the application of ———, to lay out, (if to widen and straighten, say "to make wider and straighter,") a town way in said town, for the use of said town, beginning at ——— and ending at ———, in said town, and that they will meet for said purpose on the ——— day of ——— instant, at ———, in said town, at ——— o'clock in the ——— noon; and all persons interested therein will govern themselves accordingly.

Given under our hands, this ——— day of ———, 18—.

A. B. }
C. D. } Selectmen of ———.
E. F. }

3. FORM OF LAYING OUT A TOWN WAY.

The subscribers, selectmen of ———, upon the application of ———, to lay out a town way in said town, beginning at ——— and ending at ———, having given seven days' notice of our intentions to lay out the same, and stated in said notice the termini thereof, by posting said notice in two public places in said town, and in the vicinity of the proposed route, to wit, at ——— and at ———, in said town, on the ——— day of ——— instant, and having met at the time and place appointed for that purpose, and having personally examined the route proposed, are of opinion that there is occasion for a new town way for the use of said town as proposed; we therefore lay out said way as follows, beginning at the school house in district No. 5 in said town: thence running south nine degrees east through land of A. B., thirty rods to a stake; thence north thirty degrees west of land of G. H., to a stake near the house of I. O.; the line described to be the middle of the highway, and the highway to be ——— rods wide; and we agree with the owners of the land over which the road passes, for their damages, as follows, to wit: to the said A. B., to pay him \$——; to the said E. F., to pay him \$——; and to the said G. H., to pay him \$——; to be paid by said town before said road is opened, (or as the case may be;) we award to said A. B. \$——,

to said E. F. \$——, and to said G. H. \$——, for their damages, to be paid by said town respectively; and we allow the several owners, respectively, —— months to take off the wood standing or growing on said land, and to remove the fence. Such laying out, with the boundaries and admeasurements, has been filed with the town clerk, on the —— day of ——, being seven days before this meeting; and we now hereby report such laying out, with the boundaries and admeasurements of the same, to said town, at the meeting of the inhabitants regularly warned and notified, for them to accept and allow the same.

Given under our hands this —— day of ——, 18—.

A. B.	} Selectmen of ——.
C. D.	
E. F.	

4. The notice and form for laying out a private way for the use of one or more inhabitants of any town, may be the same as in sections two and three, except omitting the words “for the use of said town,” and adding instead “for the use of —— inhabitants (or ‘proprietors of land’) of said town.”

5. The form, in case of widening and straightening a town way, may be the same as in section three, omitting the words “occasion for new town way,” and adding “occasion for widening and straightening the town way.”

6. The notice, laying out of the selectmen, and the doings of the town thereon, should be recorded at length by the town clerk, in the books of the town, and attested by him, thus: “A true copy from the original. Attest: A. B., town clerk.” And he should preserve the original on file.

7. A vote of the town, that the selectmen should lay out a particular town way, is unauthorized; it being the intention of the law, that the selectmen should exercise their own discretion on the subject. 5 Pick. R. 392.

8. When a town way has been regularly laid out by the selectmen, and approved by the town, it is an established way, and the surveyors, in making such road passable, cannot be trespassers.

9. A town has no authority to raise money to aid in building a road, which is by law to be made at the expense of the county. 11 Pick. R. 396.

10. An unrestricted vote to discontinue a town way takes effect from its passage. 37 Maine R. 52. A town way, which had its origin and continuance by virtue of a legal location, may be discontinued, although used for more than twenty years.

12. FORM OF PETITION TO COMMISSIONERS, WHEN THE TOWN REFUSES TO LAY OUT A TOWN WAY.

To the honorable, the court of county commissioners for the county of _____, next to be holden in said county of _____, at _____, on the _____ day of _____, 18—:

Humbly shows _____ that a town way from _____ to _____, in such town, would be of great public convenience; that the selectmen of said town, after notice and hearing of the parties, have laid out such way, and reported the same to the town, at a public meeting of the inhabitants duly notified and warned; yet the town has unreasonably refused to allow and approve said town way laid out by the selectmen aforesaid, and to put the same on record; wherefore your petitioner, considering himself aggrieved by such delay and refusal, prays that your honors would, agreeably to law in such case made and provided, accept and approve said town way, and direct the same to be duly recorded.

Dated at _____, A. D. 18—.

W. M.

13. FORM OF PETITION TO COMMISSIONERS FOR INCREASE OF DAMAGES ON TOWN WAYS.

To the honorable, the court of county commissioners for the county of _____, next to be holden in said county of _____, at _____, on the _____ day of _____, 187—.

Humbly shows A. B. and C. D. of _____, in said county, that the selectmen of said town, on the petition of E. F. and others of said town, pursuant to legal notice, and after hearing the parties laid out for the use of said town of _____, a town road or way from _____ to _____, (giving courses and distances) in said town and over the respective lands of us, the said A. B. and C. D. and made an estimate of the damages as by law provided; that said road or town way as laid out, was, by the selectmen, reported to said town, and duly accepted by the inhabitants of said town at a legal meeting held on the _____ day of _____ A. D. 187—; that said road or way extends one hundred rods over land of the said A. B., being laid out as over land of one E. F., and the damages were estimated and awarded to said E. F.; that no damages, whatever, have been estimated and awarded to said A. B.: that said road or way extends fifty rods over land of the said C. D., and that his damages were estimated at the sum of _____ dollars.

Your petitioners, severally, feeling themselves aggrieved and wronged by the estimate of damages aforesaid, petition your Honorable Court for damages and an increase of said damages. They therefore pray your Honors that a just estimate of their damages, occasioned by the laying out of the aforesaid described road or way, may be had, and that they may have their damages assessed in accordance with the statute in such case made and provided, and as in duty bound will ever pray.

C—, May —, 187—.

A. B.
C. D.

CHAPTER LVII.

SCHOOL MEETINGS AND AGENTS.

It is the duty of the school agent to call a district meeting in the month of March or April, annually, for the choice of an agent, and for other business, by causing notice to be given as provided by law; which meeting may be called by the agent without application therefor. See R. S., Ch. 10, § 60, item first. The form of notice for such meeting may be as follows:

No. 1. NOTICE FOR SCHOOL DISTRICT MEETING.

To the legal voters of school district No. —, in the town of —, Greeting.

The inhabitants of said school district qualified by law to vote in town affairs,¹ are hereby notified and warned to meet at the school-house in said district on —, the — day of —, 18—, at — o'clock in the afternoon, then and there to act on the following articles:

First, To choose a moderator to preside at said meeting.

Second, To choose a clerk and school agent for said district.

Third, To see what instructions said district will give to the superintending school committee or supervisor, relating to the time when schools shall commence,² and what amount of the school money shall be expended for the support of a summer school to be taught³ in said district during the ensuing year.

Fourth, To see what action said district will take in relation to procuring fuel and utensils necessary for the schools during the ensuing year.⁴

(Here state any further objects of the meeting.)

Dated at said —, the — day of —, 18—.

— } Agent of School District
— } No.— in —.

No. 2. RETURN UPON NOTICE.

The undersigned hereby certifies that he has posted up the within notice at two public and conspicuous places in said district; one at the school-house in said district and one at —, seven days at least before the day appointed for said meeting, to wit, on the — day of —, 18—.

Dated at —, the — day of —, 18—.

— School District Agent.

School district meetings at other times than in March or April,

1. See R. S. Ch. 11, section 17. 2. See section 24, item fifth. 3. See section 36. 4. See section 60, item 23.

can be called only upon the application therefor, of three or more legal voters of the district. See R. S., Ch. 11, §§ 18, 19.

NO. R. FORM OF APPLICATION TO SCHOOL AGENTS.

To the agent of school district No. —, in the town of —.

You are hereby requested by the subscribers, legal voters in said district, to call a meeting of the legal voters of said district, to be held at the school-house in said district, on the — day of —, 18—, at — o'clock in the afternoon, then and there to act upon the following articles:

First, To choose a moderator to preside at said meeting.

(Here state the further objects of the meeting.)

Dated at —, the — day of —, 18—.

See R. S., Ch. 11, § 19.

The notice to be given upon the foregoing application may be in the following form :

NO. 4.

NOTICE.

To the legal voters of school district No. —, in the town of —, Greeting.

Written application of (here insert the names of those signing the application), being legal voters in said district, having been made to the undersigned as school agent of said district, to call a meeting of the legal voters of said district at the time and place and for the purposes hereinafter named.

The inhabitants of said district qualified by law to vote in town affairs, are hereby notified and warned to meet at the school-house in said district, (here insert the time and purposes of the meeting as set forth in the application.)

Dated at —, the — day of —, 18—.

_____ } Agent of School District
 } No. — in —.

Applications for school district meetings should first be made to the school agent, as municipal officers and justices of the peace are authorized to call such meetings only when there is no agent, or when he neglects or refuses to call a meeting. 51 Maine, 101.

The application made to the municipal officers of the town or a justice of the peace for calling a school district meeting may be in the following form :

NO. 5.

To the selectmen of the town of — (or to —, Esq., a justice of the peace within and for the county of —).

The school agent of the school district No. —, in the town of —, neglecting (or refusing) to call a meeting of the legal voters thereof on the written application of at least three legal voters of said district, for the purposes herein named, (or, There being no school agent for school district No. —, in the town of —,) you are hereby requested by the subscribers,

legal voters in said district, to call a meeting of the legal voters thereof, to be held at the school-house in said district, on the — day of —, 18—, at — o'clock in the afternoon, then and there to act upon the following articles:

First, To choose a moderator to preside at said meeting.

(Here insert the further objects of the meeting)

Dated at said —, the — day of —, 18—.

— —
— —
— —

No. 6. FORM OF WARRANT TO NOTIFY, &c.

To A. B., one of the inhabitants of school district No. —, in the town of —, Greeting.

The agent of said school district neglecting (or refusing) to call a meeting of the legal voters thereof on the written application of at least three legal voters of said district, for the purposes herein named, (or, There being no school agent for said district,) and written application having been made to the undersigned, selectmen of said town, (or a justice of the peace in and for the county of —,) by (here insert the names of those signing the application,) legal voters of said district, to call a meeting of the legal voters thereof, at the time and place and for the purposes hereinafter named, you the said — are hereby required in the name of the State of Maine, to notify and warn the inhabitants of said school district No. —, in the town of —, qualified by law to vote in town affairs, to meet at the school-house in said district (here insert the time and purposes of the meeting as set forth in the application therefor.)

Dated at said —, the — day of —, 18—.

— — }
— — } Selectmen of —,
— — } (or Justice of the Peace.)

No. 7. FORM OF RETURN.

Pursuant to the within warrant, to me directed, I have notified and warned the inhabitants of school district No. —, in the town of —, qualified as therein expressed, to assemble at the time and place and for the purposes therein expressed, by posting up an attested copy of said warrant at the school-house in said district, and at —, being public and conspicuous places in said district, on the — day of —, being seven days before said meeting.

Dated the — day of — 18—.

A. B.

No. 8. NOTICE OF SELECTMEN FOR DISTRICT MEETING, UNDER THE PROVISIONS. Sec. 32, R. S. Ch. 11.

To the inhabitants of school district No. —, in the town of —:

Application in writing having been made to the undersigned, as selectmen of the town of — by (here insert the names of the applicants,) legal voters in said district (or by a committee of said district) to call a meeting of the qualified voters thereof, for the purpose hereinafter named, you are hereby notified and warned to meet at —, within said district, on the — day of — next, at — o'clock in the — noon, for the purpose of hearing the inhabitants of said district on the subject of their disagreement respecting a suitable place to be selected for the erection of a school-house in said district, and of deciding where such school-house shall be located.

Given under our hands this — day of —, A. D. 18—.

— — }
— — } Selectmen of —
— — }

It is not essential that the applicant for a warrant or notice from the selectmen to call a district meeting should be recorded or produced ; or that the application should be recited in the warrant, but it may be proved by parol that such application had been made. *Soper v. Livermore*, 28 Me. 193.

Yet, it is essential to the validity of the meeting, that there be evidence that the application therefor, in a case requiring one, has been made, and such evidence is made more certain and better perpetuated by a record than otherwise. It is therefore recommended that such applications be recorded.

After recording the applications, if any, and the notice for a meeting, with the certificate of notice (or return thereon), they should be attested by the clerk, as follows :

No. 9.

A true record of application, notice, and certificate thereon.

Attest : _____, School District Clerk.

The record may then proceed as follows :

Pursuant to the foregoing notice, the legal voters of School District No. —, in the town of —, met at the school-house in said district on the — day of —, A. D. 18—, at — o'clock in the afternoon, and were called to order by —.

Whereupon — was chosen moderator,¹ and — was duly elected clerk, and was sworn to faithfully and impartially perform the duties assigned to him by law, as clerk of school district No. — in the town of — during the ensuing year and until another should be chosen or sworn in his stead.²

By — Moderator, (or Dist. Clerk, or Just. Peace.)

— was duly elected by ballot, school agent,³ and was sworn to faithfully and impartially perform the duties assigned to him by law, as agent of school district No. — in the town of — during the ensuing year and until another should be chosen and qualified in his stead.⁴

By — Moderator, (or Dist. Clerk, or Just. Peace.)

After recording such other proceedings as may be had the record should conclude as follows :

A true record,

Attest :

_____, School Dist. Clerk.

No. 10. FORM OF OATH TO CLERK.

You, —, solemnly swear, that you will faithfully and impartially perform the duties assigned to you by law, as clerk of the school district No. —,

1. The moderator need not be sworn. R. S. Ch. 11, § 22.

2. The clerk is sworn by the moderator or a justice of the peace. Ib. § 22.

3. The agent must be chosen by ballot. Ib. § 23.

4. The agent is sworn by the moderator, district clerk, or justice of the peace. Ib. § 60.

in the town of ———, during the ensuing year, and until another shall be chosen and sworn in your place. So help you God.

No. 11. FORM OF CERTIFICATE OF SUPERINTENDING SCHOOL COMMITTEE TO TEACHERS.

To whom it may concern:—This certifies that we have examined ——— as a school teacher, and that he is well qualified to instruct youth in reading, spelling, writing, English grammar, geography, history, arithmetic, and other branches usually taught in public schools, and particularly in school district No. — in the town of ———, for which he has been examined, and that he is qualified to govern the school in said district.

Dated at ———, the ——— day of ——— A. D. 18—.

A. B. } Superintending
C. D. } School Committee
E. F. } of ———.

For form of grading certificates the following may be used :

NO. ——— Granted to		NO. 12. STATE OF MAINE. TEACHER'S CERTIFICATE.					
Spelling..... Reading..... Writing..... Arithmetic..... English Grammar.. Geography..... History..... _____ _____ _____	Rank. 	<div style="text-align: right; margin-bottom: 10px;">_____ 18—.</div> <p>This certifies that the bearer, _____, known as a person of good moral character, and having passed a satisfactory examination in the following branches with the annexed results, is recommended and authorized to instruct the _____ School in District No. _____ Town of _____</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-right: 1px solid black; padding: 5px;"> Spelling..... Reading..... Writing..... Arithmetic..... English Grammar </td> <td style="width: 50%; padding: 5px;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-right: 1px solid black; padding: 5px;"> Geography..... History..... _____ _____ _____ </td> <td style="width: 50%; padding: 5px;"> _____ _____ _____ _____ </td> </tr> </table> </td> </tr> </table> <div style="text-align: center; margin-top: 20px;">S. S. COMMITTEE, Town of _____</div> <div style="text-align: left; margin-top: 10px;">_____ 18—.</div>		Spelling..... Reading..... Writing..... Arithmetic..... English Grammar	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-right: 1px solid black; padding: 5px;"> Geography..... History..... _____ _____ _____ </td> <td style="width: 50%; padding: 5px;"> _____ _____ _____ _____ </td> </tr> </table>	Geography..... History..... _____ _____ _____	_____ _____ _____ _____
Spelling..... Reading..... Writing..... Arithmetic..... English Grammar	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-right: 1px solid black; padding: 5px;"> Geography..... History..... _____ _____ _____ </td> <td style="width: 50%; padding: 5px;"> _____ _____ _____ _____ </td> </tr> </table>	Geography..... History..... _____ _____ _____	_____ _____ _____ _____				
Geography..... History..... _____ _____ _____	_____ _____ _____ _____						

The superintending school committee shall appoint suitable times and places for the examination of candidates proposing to teach in town, and give notice thereof, and, on satisfactory evidence that a candidate possesses a good moral character, and a temper and disposition suitable to be an instructor of youth, they

EXPLANATION.—No. 10 signifies very good. No. 8, good. No. 5, medium. No. 3, poor. No. 1, very poor.

shall examine him in reading, spelling, writing, English grammar, geography, history, arithmetic, and other branches usually taught in public schools, and particularly in the school for which he is examined, and also as to his capacity for the government thereof. R. S. Ch. 11, § 54.

If the committee are desirous of showing in their certificate a full compliance with the statute requirement, on their part, in making the examination and issuing their certificate, the following form is recommended :

No. 13.

The undersigned, superintending school committee of the town of ——— having received satisfactory evidence that ——— of ———, possesses a good moral character, and a temper and disposition suitable to be an instructor of youth, have this day examined the said ——— in reading, spelling, writing, English grammar, geography, history, arithmetic, and other branches usually taught in public schools, and particularly in school district No. —, in the town of ———, and also as to capacity for the government thereof, and we do hereby certify that the said ——— is qualified to govern said school and instruct in the branches above named, and such other branches as are necessary to be taught therein, notice of the time and place of said examination having been given to each of said committee.

Dated at ———, the ——— day of ———, 18—.

——— }
 ——— } Committee.
 ——— }

No. 14. CERTIFICATE OF SUPERINTENDING SCHOOL COMMITTEE OF DISMISSAL OF A TEACHER.

The undersigned, superintending school committee of the town of ——— met at the school-house in district No. —, in said town, on the ——— day of ———, 18—, due notice of which time and place of meeting and the purposes thereof, having been given to each member thereof, and after careful and deliberate investigation, we do hereby certify that we deem the services of ——— now employed as a teacher in said district, unprofitable to the school therein, and we accordingly dismiss said teacher for the reasons following, viz :

(Here insert the reasons of dismissal.)

Dated at said ——— the ——— day of ———, A. D. 18—.

——— }
 ——— } Sup't School Com. of ———.
 ——— }

No. 15. CERTIFICATE OF EXPULSION OF A SCHOLAR.

The undersigned, superintending school committee of the town of ———, met at the school-house in school-district No. — in said town on the ——— day of ———, 18—, due notice of which time and place of meeting and the purposes thereof, having been given to each member of said committee, and after proper investigation of the behavior of ———, a scholar in the school

of said district, we have adjudged that the said — is an obstinately disobedient and disorderly scholar, and that we deem it necessary for the peace and usefulness of the school that he be removed therefrom, and we accordingly expel the said — from said school.

Dated at said — the — day of — 18 .

— — }
 — — } Sup't School Committee of —.

See R. S. Ch. 11, §. 54, relating to dismissal of teachers and expulsion of scholars.

CHAPTER LVIII.

PARISHES AND RELIGIOUS SOCIETIES.

1. Any persons of the age of twenty-one years or more, desirous of becoming an incorporated parish or religious society, may apply to a justice of the peace of the county, in which a majority of them reside, who shall issue his warrant to one of them, directing him to notify the other applicants to meet at some proper place expressed in such warrant; and he shall give notice of such meeting seven days at least before holding the same, by posting a notification thereof on the outer door of the meeting house or place of public worship of such society, if any, otherwise at such place as the justice appoints. R. S. Ch. 12, § 1.

FORM OF APPLICATION.

To A. B., Esquire, one of the justices of the peace in and for the county of —.

The subscribers, desirous of becoming an incorporated parish (or a religious society, as the case may be) under the name of the — society of the town of —, request you to issue a warrant to one of said applicants hereby applying to you, directing him to call a meeting of said applicants, to be held at —, in the town of —, on the — day of —, at — o'clock in the —noon, for the following objects, to wit: (here state the purposes of the intended meeting.)

Dated at —, this — day of —, A. D. 18—.

E. G., and seven others.

FORM OF WARRANT TO CALL A MEETING.

STATE OF MAINE.

To E. G., of ———, in said county: Greeting.

Whereas E. G. and ——— other persons, associated to form an incorporated parish (or religious society) in the town of ———, under the name of ———, having applied to me ———, one of the justices of the peace in and for said county, requesting me to issue a warrant, directed to one of said applicants, directing him to call a meeting of said persons, according to law, to act upon the following objects, to wit: (here state the purposes of the meeting.) You are hereby directed to notify a meeting of said persons, according to law, to be held at ———, in said town, on the ——— day of ——— at ——— o'clock in the ———noon, for the purpose aforesaid.

Given under my hand, at said ———, this ——— day of ———, 18—.

A. B., Justice of Peace.

FORM OF NOTIFICATION. .

Pursuant to the foregoing warrant to me directed, I hereby notify said persons to meet at the time and place and for the purposes aforesaid.

Dated at ———, this ——— day of ———. 18—.

E. G.

FORM OF RETURN OF NOTIFICATION.

This certifies that I posted up the aforesaid notification on the outer door of the meeting house of said society, (or state the place appointed by the justice,) on the ——— day of ———, and on the same day I posted a like notification at ———, in said town, being seven days before said meeting.

E. S.

CHAPTER LIX.

PAUPERS.

1. Kindred are liable to support poor relatives, and may be assessed on complaint to supreme judicial court. See R. S., Ch. 24, §§ 9, 10, 11, 12 and 13.

FORM OF COMPLAINT.

To the Justice of the Supreme Judicial Court, next to be holden at ———, within and for the county of ———, on the ——— Tuesday of ———, A. D. 187—.

The inhabitants of the town of ———, in said county, by their selectmen, complain and inform this Honorable Court, that A. B. is a pauper, whose settlement is in said town, and that said town for one year last past have and now are incurring expense for the relief and support of said pauper; that

C. D. of ———, in said county, is the father of said A. B., and is of sufficient ability to support or aid in the support of the said A. B., and your complaints respectfully request this Honorable Court to summon the said C. D. to appear before this Honorable Court for a hearing in the premises as required by law, that this court may assess and apportion a reasonable sum upon the said C. D. for the past and future support of said A. B., as is by law provided.

Dated this ———day of ———, A. D. 187—.

——— } Selectmen
 ——— } of the
 ——— } Town of ———.

2. Minor children of paupers may be bound by deed of indenture by overseers of the poor without their consent, as apprentices or as servants to any citizen of the State. R. S. Ch. 24, § 14.

FORM OF DEED OF INDENTURE.

This indenture made by and between A. B. and C. D., overseers of the poor of the town of ———, in the county of ———, and State of Maine, of the one part, and E. F., of the said town, of the other part, witnesseth: That said overseers, by the authority vested in them by law, have bound, and do hereby bind out to the said E. F., C. D., the minor child of L. M., who is chargeable as a pauper to said town, as a servant to serve from the date hereof, for and until the full end and term of his minority, unless sooner discharged, by the death of the said E. F.—During which time said C. D. shall faithfully serve said E. F. in all things whereunto he may lawfully command him. And the said E. F. covenants on his part that he will furnish and provide the said C. D., during the continuance of the said term, with suitable and sufficient board, clothing, lodging, and washing; and in case of sickness, with medical attendance, care, and medicines, and shall cause him, the said C. D., to be instructed to read, write and cypher, and give him, the said C. D., all the benefit of the winter schools in his, the said E. F.'s school district, during said term, and pay the said C. D., at his majority, the sum of ———dollars.

In witness whereof said parties have hereunto set their hands and seals, this ——— day of ———, A. D. 187—.

} (seal.)
 } (seal.)
 } (seal.)
 } (seal.)

Signed, sealed, and delivered in the presence of ———.

3. When a child so bound departs from service without leave, he may upon complaint be arrested and returned. See R. S. Ch. 24, §. 18.

FORM OF COMPLAINT.

To A. B., a trial justice in and for the county of ———.

E. F. of E., in said county [addition] on oath, complains and informs the said justice, that C. D., on the ———day of ———at said E., a minor, under the age of twenty-one years, being then and there bound to [the said F.,] as an apprentice, [or servant] did depart from the service of the said F., against the peace of the said state, and contrary to the form of the statute in such case made and provided. He therefore prays that the said C. D. may be apprehended and held to answer to said complaint, and further dealt with relative to the same as law and justice may require. Dated at E. aforesaid, this

— day of —, in the year of our Lord one thousand eight hundred and —. E. F.

K—, ss. 18—. Then the said E. F. made oath to the truth of the foregoing complaint, before me.

A. B., Trial Justice.

5. WARRANT UPON THE ABOVE COMPLAINT, WITH SUMMONS OF WITNESSES.

STATE OF MAINE.

K—, ss. To the sheriff of the said county of K., or his deputies, or any [L. s.] constables of the town of E., in said county, Greeting.

Forasmuch as the foregoing complaint hath this day been made upon oath to me the subscriber one of the trial justices within and for the county of K.: These are therefore, in the name of the state of Maine, to require and command you forthwith to apprehend the body of C. D. therein mentioned, and bring him before me or some other of the trial justices within and for said county, that he may be examined concerning the subject matter of said complaint, and further dealt with as to law and justice shall appertain. And you are alike required to summon the complainant, and also G. H. and I. K. to appear and give evidence relative to the same when and where you have the said respondent. Hereof fail not at your peril. Given under my hand and seal at said H., this — day of — in the year of our Lord one thousand eight hundred and —.

A. B., Trial Justice.

6. STATE OF MAINE.

K—, ss. To the sheriff of said county, or his deputies, or any constable of [L. s.] the town of E., in said county, Greeting.

Whereas C. D. of E. in said county, has this day been brought before me, A. B., Esquire, one of the trial justices within and for said county, by virtue of a warrant issued against him, upon the complaint of E. F. of said E. [addition] who says that the said D., on the — day of — at said E., a minor under the age of twenty-one years, being then and there bound to [the said F.,] as an apprentice [or servant] did depart from the service of [the said F.,] against the peace of the said state, and contrary to the form of the statute in such case made and provided; and of which offence the said D. stands convicted: you are hereby required, in the name of the said state, forthwith to take the body of the said D. and return him to [the said F.,] in E. aforesaid, the place of his duty.

A. B., Trial Justice.

7. WARRANT OF COMMITMENT TO JAIL.

STATE OF MAINE.

K—, ss. To the sheriff of said county, or his deputy, or any constable of [L. s.] the town of P. in said county, and to the keeper of the jail in said county, Greeting.

[Let the preceding form be used, with the following variation after the word *convicted*.]

You are hereby required in the name of the said state, to take the body of the said D. and him commit to the commonjail of said county, and we command the keeper thereof accordingly to receive the said D. into our said ail, and detain him in his custody within our said jail for the term of — days unless sooner discharged by the said F. or otherwise by order of law. Given, &c. (as in the warrant.)

8. Overseers may set to work, or by deed bind to service upon

reasonable terms, for a time not exceeding one year, persons having settlements in their town or having none in the state, married or not married, able of body, upwards of twenty-one years of age, having no apparent means of support, and living idly; and all persons liable to be sent to the house of correction. R. S. Ch. 24, § 20.

9. FORM OF DEED OF INDENTURE.

This indenture made by and between ———, overseers of the poor of the town of ———, in the county of ——— and State of Maine, of the one part, and ———, of the said town, of the other part, witnesseth: That said overseers, by the authority vested in them by law, have bound, and do hereby bind out to labor to the said ———, for one year from the date hereof, ———, a person residing in said town, [or “a person residing in said town, but having no settlement in the state,” as the case may be,] who is able of body, but who has no apparent means of support, and who lives idly, and pursues no lawful business. During which time said ——— shall faithfully serve said ——— in all things whereunto he may lawfully command him. And the said ——— covenants on his part that he will pay said overseers for the services of the said ——— for the term aforesaid, the sum of ——— dollars, to be by them applied to the maintenance of said ——— [if he have a family, add, “or his family.”]

In witness whereof said parties have hereunto set their hands and seals, this ——— day of ———, A. D. 18—.

} [seal.]
 } [seal.]
 } [seal.]

Signed, sealed, and delivered in the presence of ———.

10. The overseers are to inquire into the treatment of bound children, and to protect and defend them in the enjoyment of their rights in reference to their masters and others. They may complain to the supreme judicial court in the county where their town is, or where the master resides, against such master, for abuse, ill treatment or neglect of a child bound to him. The court is to cause him to be notified, and upon a hearing of the parties, or on default, may, for sufficient cause proved, discharge the child with costs, or dismiss the complaint, with or without costs, at discretion. Any child so discharged, or whose master has deceased, may be bound anew for the remainder of the time. Ib. § 15.

11. FORM OF COMPLAINT.

To the honorable the justices of the supreme judicial court for the county of ———, holden at ———, in said county, on the ——— day of ———, A. D. 18—, complain, —

A., B., C., overseers of the poor in the town of ———, in said county,

that —, a minor, on the — day of —, A. D. 18—, was legally bound out as an apprentice, [or servant,] by indenture, to —, to learn the trade of a printer, from that date until the — day of —, A. D. 18—, at which time he will be of the age of twenty-one years.

And your complainants allege that said — has abused and ill-treated, [or neglected] said —, having, [here insert the ill conduct of the master complained of,] all of which is against the peace and dignity of the state, and contrary to the statute in such case made and provided; wherefore your complainants pray that your honors would liberate and discharge said —, with costs, from said apprenticeship.

Dated at — this — day of —, A. D. 18—.

— — — { Overseers of the Poor
— — — of the Town of —.

12. A person residing in a place not incorporated, may provide relief and medical aid for persons sick, wounded, or dangerously injured, residing in such place, or may cause him to be buried, and recover the amount necessarily expended of the town where such person had a settlement, if, within sixty days after such relief was afforded, he has delivered into a postoffice, post age paid, a written notice signed by him informing them of the name of the person relieved, the nature of his sickness or injury, if known, and the amount expended. Towns paying such expenses or costs may recover the amount with interest of the person relieved, or of any one liable for his support. R. S. Ch. 24, § 23.

13. FORM OF NOTICE.

To the overseers of the poor of the town of E., in the county of —, in the State of Maine:

GENTLEMEN: — You are hereby notified that S. W., residing in F. plantation in the county of — and state aforesaid, was taken sick in said plantation on or about the — day of —, 18—, by childbirth. By said sickness and confinement said S. W. having fallen into distress and in need of immediate relief in said plantation, which relief has been and was afforded to her while sick as aforesaid by me the undersigned, a person residing now and at the time aforesaid, in said plantation, on the account and at the proper charge of the town of E. aforesaid, where said S. W. has her legal settlement. You are also notified that an infant child of said S. W., having no name, on or about the — day of —, aforesaid, was suddenly taken sick and deceased, nature of sickness not known, and that I caused said child to be properly and suitably buried on account and at the proper charge of said town of E. The amount necessarily expended by me for the relief of said S. W., as aforesaid, and for the burial of said infant is — dollars and — cents, and payment is hereby requested of said sum of \$—. Dated at said plantation this — day of —, A. D. 18—. C. D.

14. Overseers are to send a written notice, signed by one or more of them, stating the facts respecting a person chargeable in

their town, to overseers of the town where his settlement is alleged to be, requesting them to remove him, which they may do by a written order directed to a person named therein, who is authorized to execute it. *Ib.* § 27.

15. FORM OF NOTICE.

To the overseers of the poor of the town of ———, in the county of ———, in the State of Maine:—

GENTLEMEN:— You are hereby notified that A. B., an inhabitant of your town, having fallen into distress, and in need of immediate relief, in the town of ———, the same has been furnished by said town on the account and at the proper charge of the town of ———, where said A. B. has his legal settlement; you are requested to remove said A. B., or otherwise provide for him, without delay, and to defray the expense of his support in said town of ———. The sums expended for his support up to this date are ———.

Dated at ———, this ——— day of ———, A. D. 18—

——— }
 ——— } Overseers of the Poor of — .
 ——— }

16. Overseers receiving such notice are within two months, if the pauper is not removed, to return a written answer, signed by one or more of them, stating their objections to his removal; and if they fail to do so, the overseers requesting his removal may cause him to be removed to that town; and the overseers of the town to which he is sent are to receive him and provide for his support; and their town is estopped to deny his settlement therein, in an action brought to recover for the expenses incurred for his previous support and for his removal. *R. S. Ch. 24, § 28.*

17. When a written note or answer provided for in this chapter is sent by mail, postage paid, and it arrives at the post-office where the overseers to whom it is directed reside, it is a sufficient notice or answer. *Ib.* § 29.

18. FORM OF DENIAL.

To the overseers of the poor of the town of ———.

GENTLEMEN, -- Your letter of the ——— instant, stating that A. B. has fallen into distress, and been furnished relief by your town, at the charge of the town of ———, was duly received. Upon inquiry, we are satisfied that this town is not the place of the lawful settlement of the said A. B. We cannot, therefore, cause his removal, nor contribute towards his support.

Dated ———.

Yours with respect,

A. B. }
 C. D. } Overseers of the Poor of
 E. F. } the Town of ———.

19. COMPLAINT FOR REMOVAL OF A PAUPER OUT OF THE STATE.
R. S. Ch. 24, § 31.

Complain A. B. &c., overseers of the poor of the town of ———, that S. L., a poor person residing in said town, but who has no lawful settlement in this state, but belongs to ———, has stood in need and has been relieved and supported by them, the said overseers, and that he, the said S. L., still stands in need of further support and relief; wherefore they pray, that a warrant may be issued to convey the said S. L. to the said ——— where he belongs, according to the statute in such case made and provided, or that the said S. L. be otherwise dealt with according to law. Dated, &c.

20. COMPLAINT AGAINST INTEMPERATE POOR. Ib. § 33.

Complain A. B., &c., overseers of the poor of the town of ——— that E. P. now being in said town, and standing in need of support as a pauper, on ——— at said ——— is notoriously subject to habits of intemperance: wherefore your complainants pray that the said E. P. may be arrested, and further dealt with relative to the same according to law. Dated, &c.

21. FORM OF MITTIMUS. Ib. § 33.

STATE OF MAINE.

P——, ss. To the sheriff of the county of P. or his deputy, or the constables [L. s.] of the town of B., and to the master of the house of correction [or the keeper of the jail] in said county, [or town of B.] Greeting.

Whereas it appears to me, J. D., Esquire, one of the trial justices for the county aforesaid, upon sufficient evidence, that E. P., who is this day brought before me, by virtue of a warrant issued against him, upon the complaint on oath of A. B., overseers of the &c., is a [state the offence.] You are hereby required in the name of the State of Maine, to take the said E. P., and him carry to the house of correction in said ——— [or jail in said county, as the house of correction, there being no other provided,] and him deliver to the keeper thereof; and the said keeper is alike required to receive the said E. P. into his custody and him there keep until he is discharged by the overseers of the said town of ———, or by two justices of the peace and quorum.

Given under my hand, &c.

J. D. Trial Justice.

CHAPTER LX.

BASTARD CHILDREN AND THEIR MAINTENANCE.

1. When a woman pregnant with a child, that if born alive may be a bastard, or who has been delivered of a bastard child, accuses any man of being the father thereof, before any justice of the peace, and requests a prosecution against him, he shall take

her accusation and examination on oath, respecting the accused, and the time and place when and where the child was begotten, as correctly as they can be described, and all such other circumstances as he deems useful in the discovery of the truth. R. S., Ch. 97, § 1.

2. Prosecutions under the bastardy act are not local, and may be brought in the county where the mother resides, though the child were begotten and born in another. 6 Greenl. 460. It is essential that the mother accuse the putative father during her travail, and before delivery; but this fact need not be stated in the examination or complaint, as it is one which cannot be proved by the testimony of the mother. *Ib.*; 2 Mass. 441; 5 Pick. 63. The statute of limitations furnishes no bar to prosecutions of this kind. 16 Maine 38. If the mother marry before a prosecution, her husband should join in the complaint. *Ib.* The fact that the child needs no present support is unimportant, as future support may be required, and may be secured by the prosecution. *Ib.* The complaint is in the nature of a civil suit, and must be entered at the term of court for the transaction of civil business. *Smith v. Lunt*, 37 Me. 546.

3. FORM OF EXAMINATION AND ACCUSATION BEFORE BIRTH.

The examination and accusation of A. B. of C. in the county of O., single woman, taken on oath before me, G. R., Esq., one of the justices of the peace in and for said county :—

Who says, that she is now pregnant with child, and that the said child is likely to be born a bastard, and that E. F. of C. in the county of ——— (addition,) is the father of said child, and that he did beget her with child on or about the ——— day of ———, at ——— (here insert all such other circumstances as the justice shall deem useful in the discovery of the truth.) She therefore prays that he, the said E. F., may be apprehended and held to answer to this accusation, and further dealt with thereon, according to law.

A. B.

Taken, signed, and sworn to, on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, before me,

G. R., Justice of the Peace.

4. FORM OF EXAMINATION AFTER BIRTH.

The examination and accusation of A. M. of ———, &c. (as in form No. 3.)

Who saith, that on the ——— day of ——— now last past, at ——— in the town of ——— in the county aforesaid, she, the said A. M., was delivered of a (male) bastard child ——— and that E. F. of ——— in said county, (addition,) did get her with child of the said bastard child. (Here state the circumstances and conclude as in form No. 3.)

5. FORM OF WARRANT BEFORE BIRTH.

L. s. L. —, ss. To the sheriff of said county, &c.

Whereas A. B. of — in said county, single woman, hath by her examination, taken upon oath, before me, G. R., Esq., one of the justices of the peace, in and for said county, declared herself to be pregnant with child, and that the said child is likely to be born a bastard, and that E. F. of — in said county, (addition,) is the father of the said child, and hath prayed process against the said E. F.: therefore, in the name of the State of Maine, you are hereby commanded, immediately to apprehend the said E., if in your precinct, and to bring him before me, or some other justice of the peace, to find sufficient sureties for his personal appearance at the next supreme judicial court, to be held at —, on — in and for the said county of L., and to abide and perform such order or orders as shall be made in the premises, in pursuance of the statute in such behalf made and provided.

Given at —, on the — day of —, A. D. 187—.

G. R., Justice of the Peace.

6. FORM OF WARRANT AFTER BIRTH.

L. —, ss. To, &c.

Whereas A. M. of —, in the said county, single woman, hath by her examination, taken upon oath, before me, — one of the justices of the peace in and for the said county, declared, that on the — day of — now last past, at — in the town of — in the county aforesaid, she, the said A. M., was delivered of a (male) bastard child; and hath charged E. F. of — in the said county, (addition,) with having gotten her with child of the said bastard child, (conclude as in the foregoing form.)

7. When the person is brought before such or any other justice, he may require him to give bond to the complainant, with sufficient sureties, in such reasonable sum as he orders, conditioned for his appearance at the next snpreme judicial court for the county in which she resides, and for his abiding the order of court thereon; and if he does not give it, he shall commit him to jail until he does. R. S. Ch. 97, § 3.

8. FORM OF BOND TO ANSWER ACCUSATION.

Know all men by these presents, that we, E. F. of P. in the county of L. and State of Maine, as principal, and L. R. (addition,) and S. W. (addition,) both of said P. as sureties, are indebted to A. M. of T. in said county, single woman, in the just sum of — dollars, to the payment of which we hereby bind ourselves, our executors and administrators. Dated this — day of —, in the year of our Lord one thousand eight hundred and —.

The condition of this obligation is such, that whereas the said A. M. hath upon her examination on oath, taken before S. F., Esquire, one of the justices of the peace within and for said county of — on the — day of — in the year aforesaid, accused the said E. of being the father of a bastard child of which she is now pregnant, and the said justice hath ordered him, the said E., to give sureties for his appearance at the supreme judicial court next to be held at W. within and for the said county, on the — Tuesday of — next, then and there to answer to the said accusation; now if the said E. shall appear at the said court, and answer to the said accusation, and abide the order of court thereon, this bond shall be void; otherwise, it shall remain in full force and virtue.

Signed, sealed and delivered,
in presence of
A. B.

E. F. [L. s.]
L. R. [L. s.]
S. W. [L. s.]

9. FORM OF MITTIMUS BEFORE AND AFTER BIRTH.

STATE OF MAINE.

[Seal.] L—, ss. To the sheriff of said county or his deputy, or any constable of the town of —, in said county, and to the keeper of the common jail in —, Greeting:

Whereas A. B., single woman, in her examination, in writing, on oath, the — day of —, A. D. 18—, before me, —, one of the justices of the peace in and for the county of —, hath declared herself to be with child, and that the said child, if born alive, will be a bastard, and likely to become chargeable to the town of —, and hath charged E. F., of —, with having begotten her with child of said bastard child; (or if it be after the birth, say:) Whereas A. M., single woman, in her examination in writing, on oath, before me, —, one of the justices of the peace in and for said county, hath declared, that on the — day of —, A. D. 18—, at —, in the town of —, she was delivered of a bastard child; and whereas said — was brought before me, by warrant, and refuses to give sureties for his appearance at the next supreme judicial court to be held at —, in and for said county, to answer to said charge, and to abide the order of court thereon. These are to command you to take and convey said E. to the common jail at —, in said county, and to deliver him to the keeper thereof, together with this warrant. And you, the said keeper, are commanded to receive said — into your custody in said jail, and him there safely to keep, until he shall give such security, or be discharged by due course of law.

Given under my hand and seal this — day of —, A. D. 18—.

G. R., Justice of the Peace.

10. RECORD OF THE TAKING OF BOND, &c.

STATE OF MAINE.

L—, ss. Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and —, E. F. of P., in said county, (addition,) was brought before me, S. F., Esquire, one of the justices of the peace within and for said county, at my dwelling-house in W., in said county, by virtue of the foregoing warrant, issued on the voluntary accusation and examination as aforesaid, of A. M. of T. in said county, single woman, and gave bond as principal with L. R. and S. W., both of said P., as sureties, in the sum of — dollars; the condition of which obligation is such, that if the said E. F. shall appear at the supreme judicial court next to be held at —, within and for said county, on the — Tuesday of — next, then and there to answer to the said accusation and abide the order of said court thereon, the said bond shall be void; otherwise shall remain in full force and virtue.

S. F., Justice of the Peace.

11. FORM OF DECLARATION TO BE FILED BEFORE TRIAL. (Ib. § 5.)

O—, ss. Supreme Judicial Court, Term, 187—.

A. B., complainant, v. E. F., respondent. And now on this— day of the term of said court the said A. B. declares that she has been delivered of a bastard child, begotten by the said E. F. on the — day of —, A. D. 187—, in the town of —, in the county of —, in the night time of said — day of —, and in the east bed-room of the dwelling-house of —, in said town of —; that being put on the discovery of the truth during the time of her travail, she accused the said respondent of being the father of the child, and that she has been constant in such accusation.

A. B.

12. COMPLAINT FOR CONCEALING THE DEATH OF A BASTARD CHILD. (See R. S. Ch. 124, § 97.)

A. B. of B. upon his oath complains, that C. D. of D. on — at — being then and there pregnant with a (male) child, willingly did bring forth the said child, of the body of her, the said C. D., and was then and there delivered thereof, alone, and in secret by herself; which said child, so being born, and so being the issue of the body of her, the said C. D., if it were born alive, was by the laws of the state a bastard; and that she, the said C. D., did then and there privately, by herself, (or, by the procurement of E. F., if such was the fact,) conceal the death of said bastard child, the said issue of her body, so that it might not be known whether it were born alive or not, or whether it were murdered or not, against the peace of said state, and contrary to the statute in such case made and provided. Wherefore, &c. (Conclusion and warrant as in other criminal cases.)

13. If the mother marry before a prosecution, the husband shall join in a complaint. 16 Maine R. 38.

A settlement between the father and mother of the child will not discharge the father from his liability to the town to maintain the child.

In order to entitle the woman to be a witness, she must declare before her delivery that the person charged is father of the child, and continue constant in the accusation before witnesses. 6 Greenl. R. 460.

Where a complainant, in a bastardy process, alleged that the child, of which she was then pregnant, was begotten on or about a certain day in April, without saying in what year, it was held to refer to the next April preceding. 8 Maine 163.

A recognizance taken by a magistrate, in a bastardy process, instead of a bond, is inoperative and void. 2 Maine 165.

A settlement of a bastardy process by the mother, or by the town, without the consent of the other, is no discharge of the respondent; therefore a note given upon such settlement is without consideration, and payment cannot be enforced. 18 Maine 150.

14. For farther proceedings under the statute relating to bastard children and their maintenance. See R. S. Ch. 97.

CHAPTER LXI.

TOWN HOUSES OF CORRECTION.

1. Towns are empowered to build and maintain houses of correction. R. S. Ch. 141, § 17.

2. The overseers of any such town house of correction may commit thereto, for a term not exceeding forty-eight hours, any person publicly appearing intoxicated, or in any manner violating the public peace, when the safety of the person intoxicated, or the good order of the community requires it, till such person can be conveniently carried before a magistrate and restrained by complaint and warrant in the usual course of criminal prosecutions. Ib. § 23.

3. The form of the order for commitment may be in substance as follows : —

To A. B., master of the house of correction in the town of ——— : You are hereby required to receive and keep C. D. in said house of correction for the term of ——— hours, unless sooner discharged by our order.

E. F. } Overseers of said House
G. H. } of Correction.

And any sheriff, deputy sheriff, constable, or other person, to whom such order is given by said overseers, shall forthwith apprehend and convey such person to said house of correction, and deliver him to the master thereof, to be taken and kept agreeably to the order ; and shall be entitled to receive from the town such fees for service and travel as are allowed for service of warrants. Ib. § 24.

CHAPTER LXII.

PREVENTION OF FIRES.

1. When any chimney, stove, stove pipe, oven, furnace, boiler, or appurtenances thereto are defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the municipal officers, on complaint of any fire ward, or other citizen, being satisfied by examination or other proof that such complaint is well founded, shall give written notice to the owner or occupier of such building, and if he unnecessarily neglects for three days to remove or repair the same effectually, he shall forfeit not less than ten, nor more than one hundred dollars. R. S. Ch. 26, § 17.

2. FORM OF NOTICE.

To ———, of the town of ———,

You are hereby notified, that the stove pipe [or otherwise, as the case may be] in the house [or store, or building] occupied by you is deemed by us, selectmen of said town, to be defective, [or out of repair, or is so placed as to endanger the building occupied by ———, next contiguous to the building in which it is placed,] and you are requested to remove or repair the same effectually without delay, under the penalty in such case made and provided.

Dated at ———, the ——— day of ———.

——— }
 ——— } Selectmen of ———.
 ——— }

CHAPTER LXIII.

1. The municipal officers, treasurer, and clerk of every town shall annually meet on the first Monday of May, or on the succeeding day, or both, and at such time and place in said town as they appoint by posting up notices in two or more public places therein, at least seven days previously, stating the purposes of the meeting; and at such meeting may license under their hands as many persons of good moral character, and under such restrictions and regulations as they deem necessary, to be innholders and victualers in said town, until the day succeeding the first Monday in May of the next following year, in such house or other building as the license specifies, and at such meeting they may revoke licenses. R. S. Ch. 27, § 1.

2. No person shall receive his license until he has given his bond to the treasurer, to the acceptance of the board granting it, with one or more sureties, in the penal sum of three hundred dollars, in substance as follows, viz. : —

Know all men, that we, ———, as principal, and ———, as sureties, are holden and firmly bound to ———, treasurer of the town of ———, in the sum of three hundred dollars, to be paid to him, or his successor in said office; to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals. Dated the ——— day of ———, in the year 18—. The condition of this obligation is such, that whereas the above bounden ——— has been duly licensed as a ——— within the said town of ———, until the day succeeding the first Monday of May next: now, if in all respects he conforms to the provisions of the law relating to the business for which he is licensed, and to the rules and regulations as provided by the licensing board in reference thereto, then this obligation shall be void, otherwise remain in full force.

Signed, sealed, and delivered
in presence of ———.

(seal.)
(seal.)
(seal.)

3. FORM OF LICENSE TO INNOLDERS AND VICTUALERS.

We the undersigned, municipal officers, treasurers, and clerk of the town of ———, for the year 18 —, having met at ——— in said town, on this first Monday of May, 18 —, at one of the clock in the afternoon, in accordance with previous notices duly posted in two public places in said town, for the purpose of licensing under our hands according to law, persons to be inn-

holders and victualers in said town until the day succeeding the first Monday in May, 18 , do hereby license A. B. of said town to be an innholder and victualer in the National House in said town until the thirty-first day of May, 18 , unless revoked by us before that time, under the following restrictions and regulations, viz: (here insert the restrictions, &c.)

Given under our hands this ——— day of May, ———, 18 .

—————, }
 —————, } Selectmen of ———.
 —————, }
 ——— Treasurer.
 ——— Clerk.

4. The clerk shall record all licenses granted, and the person licensed shall pay to the treasurer for the use of the board, one dollar. Ib. § 4.

5. Selectmen of towns, mayor and aldermen of cities, are authorized to purchase intoxicating liquors, and appoint agents to sell the same for certain purposes. R. S. Ch. 27, § 26.

6. FORM OF AGENT'S BOND. Ib. § 27.

Know all men that we, ———, as principal, and ——— as sureties, are holden and stand firmly bound to the inhabitants of the town of ———, (or city, as the case may be,) in the sum of six hundred dollars, to be paid them, to which payment we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this ——— day of ——— A. D. 18 .

The condition of this obligation is such, that whereas the above bounden ——— has been duly appointed an agent for the town (or city) to sell intoxicating liquors for medicinal, mechanical and manufacturing purposes and no other, until the ——— of ——— A. D. 18 , unless sooner removed from said agency. Now if the said ——— shall in all respects conform to the provisions of the law relating to the business for which he is appointed, and to such regulations as are now or shall be from time to time established by the board making the appointment, then this obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered
 in presence of ———.

A. B. (seal.)
 C. D. (seal.)
 E. F. (seal.)

7. The agent so appointed and giving bond as aforesaid, shall have a certificate of appointment. Ib. § 27.

8. FORM OF CERTIFICATE.

We the undersigned, selectmen of the town of ———, hereby certify that we have this day appointed A. B. as agent of said town to sell intoxicating liquors therein, at his store (or inn, as the case may be) in said town, for medicinal, mechanical and manufacturing purposes only, for one year from this date, unless sooner removed by us or our successors in office (if regulations are prescribed, add.) And in the sale of such liquors said agent shall conform to the following regulations, to wit (here specify the regulations.)

Given under our hands this ——— day of May, 187—.

C. D., }
 E. F., } Selectmen of the
 G. H., } town of ———.
 for 18—.

The above form is applicable to cities.

CHAPTER LXIV.

PUBLIC EXHIBITIONS.

1. If any person, for money or other valuable article, exhibits in this state any images, pageantry, sleight of hand tricks, puppet show, circus, feats of balancing, wire dancing, personal agility, dexterity, or theatrical performances, without a license therefor, he shall forfeit for every such offense not more than one hundred nor less than ten dollars; but this prohibition shall not extend to any permanently established museum. R. S. Ch. 29, § 1.

2. The municipal officers of towns may grant licenses for any of the foregoing exhibitions or performances therein, on receiving for the use of their town such sum as they deem proper; twenty-four hours being allowed therefor. Ib. § 2.

3. FORM OF LICENSE.

We, the subscribers, selectmen of the town of ———, hereby license ——— to exhibit a menagerie of animals within said town, on the ——— day of ———, he having paid to us ——— dollars therefor, to the use of said town.
Given under our hands this ——— day of ———, 18 .

—————, }
—————, } Selectmen of ———.
—————, }

BOWLING ALLEYS AND BILLIARD ROOMS.

4. No person shall keep a bowling alley or billiard room without a license, under a penalty of ten dollars for each day. Ib. § 3.

5. The municipal officers of towns may license suitable persons to keep bowling alleys and billiard rooms therein, in any place where it will not disturb the peace and quiet of a family, for which the person licensed shall pay ten dollars. Ib. § 4.

6. Every person licensed to keep a bowling alley or billiard room shall, at the time he receives his license, give a bond to the town or city with two good and sufficient sureties in the sum of not less than one hundred dollars, conditioned that he will not permit any gambling, or drinking of intoxicating liquors in or about

exhibits to the town treasurer the entire skin thereof, with the ears and nose on it in as a perfect a state as when killed, except natural decay, and signs and makes oath to a certificate, which oath said treasurer is hereby authorized to administer, in which he shall state that he killed said animal, and the time when, and the place where he killed it, showing it to be within this state; and the said treasurer shall thereupon cut off the whole of the ears and the whole of the nose from such skin, and entirely destroy them by burning, then he shall pay the bounty and take the receipt of the claimant therefor, upon the same paper with such certificate. The treasurer shall immediately make upon the same paper a certificate, under oath, addressed to the treasurer of state, that he first cut off the ears and nose from the skin of such animal, and destroyed them by burning, and then paid the said bounty to the claimant. Ib. § 6.

3. Said certificates and receipts shall, annually in the month of December, be transmitted to the treasurer of state, and by him laid before the legislature, as early as convenient; and when allowed by the legislature, shall be paid by the treasurer of state to such town. Ib. § 7.

4. The certificates shall be in the following form:

CLAIMANT'S CERTIFICATE.

To the treasurer of ———. I hereby certify that on the ——— day of ———, A. D. 18 ———, at ———, in the State of Maine, I killed the ———, the skin of which I now exhibit to you; and I claim the bounty allowed by law for killing the same.

Dated at ———, this ——— day of ———, A. D. 18 ———. ———, Claimant.

Subscribed and sworn to before me, the day and year aforesaid.
———, Treasurer of ———.

CLAIMANT'S RECEIPT.

On this ——— day of ———, A. D. 18 ———, I received of ———, treasurer of ———, ——— dollars, being the bounty allowed by law for killing the ——— as described in the above certificate.

———, Claimant.

TREASURER'S CERTIFICATE.

I hereby certify that, as required by law, I first cut off the whole of the ears and nose from the skin of ——— described in the foregoing certificate, and destroyed the same by burning, and then paid to the said ——— the bounty for which I have taken his receipt as above.

Dated at ———, this ——— day of ———, 18 ———. ———, Treasurer of ———.

Subscribed and sworn to before me, the day and year aforesaid.
———, Justice of the Peace.

CHAPTER LXVI.

POUNDS, AND IMPOUNDING BEASTS, R. S., Ch. 23.

1. Each town shall annually choose a pound keeper for each pound therein, who shall be sworn, and before he acts give bond with sureties satisfactory to the municipal officers, for the faithful discharge of his duties; and the town shall be responsible for all his illegal doings or defaults, to the party injured in an action on the case. R. S. Ch. 23, § 5.

The form of oath may be as follows:—

You, A. B., having been elected pound keeper in the town of ———, do swear, that you will faithfully discharge the duties assigned to you by law. So help you God.

2. FORM OF BOND.

Know all men, that we, ———, as principal, and ———, as sureties, are holden and stand firmly bound to the inhabitants of the town of ———, or the city of ———, (as the case may be) in the sum of ——— dollars, to be paid to them, to which payment we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this ——— day of ———, A. D. ———.

The condition of this obligation is such, that whereas said ——— has been chosen a pound keeper for said town for the year 18 ———; now, if said ——— shall well and faithfully perform all the duties of his said office, then this obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered in presence of,

A. B. (seal).
C. D. (seal).
E. F. (seal).

3. Each pound keeper, in a book to be provided at the expense of the town, shall record at length all the certificates received from persons committing beasts to the pound, or finding stray beasts, and a single copy of all advertisements by him posted or published; and shall note therein when a beast was impounded, and when and by whom taken away, and all his proceedings in the impounding and sale, the price for which said beast was sold, the name of the purchaser, and the disposal of the proceeds of sale;

and a copy of said record, duly attested by him or his successor, shall be evidence for the purchaser of his title to said beast, and of the truth of all the facts thus recorded; and for making such record, and for each copy thereof, the pound keeper shall be entitled to twenty-five cents; and said book shall be delivered to his successor in office, and shall be open to inspection of all persons interested therein. Ib. § 6.

4. The pound keeper shall restrain the beasts impounded in the town pound or such other place, after the first day, as is more for their comfort or their safety, and for giving them food and drink; which shall be furnished by him at the expense of the impounder. Unless payment is made in advance, or sufficient security therefor tendered, he need not receive such beasts into pound. Ib. § 7.

5. Before the pound keeper shall receive any beast into pound, the impounder shall furnish him with a certificate under his hand, briefly describing the beast, the cause of impounding, the amount of damages or forfeiture claimed, and charges of impounding then accrued, of the following purport: Ib. § 8.

To the pound keeper of ———.

The undersigned A. B. of B., herewith commits to pound, [a horse or cow, as the case may be, with a short description of the beast,] taken up [in the highway or inclosure of said A. B., situate in said B., as the case may be,] and the said A. B. demands ——— dollars and ——— cents for [damages or forfeiture, as the case may be,] and the unpaid charges for impounding the same.

Witness my hand, A. B., of B., (date) 18 .

A. B.

6. The pound keeper shall not be liable to any action for receiving or detaining any beast so committed, till the sums claimed by such certificate, and all other due expenses, costs and fees are paid to him, except as provided in the next section. Ib. § 9.

7. If the claimant of such beast objects to the amount stated as damages, or if no claimant appears, the pound keeper shall within ten days, and not afterwards, issue a warrant under his hand to two disinterested persons of said county, to the following purport:

P., ss. To E. F. and G. H., two disinterested persons of said county:

GREETING.

You are hereby appointed to view and estimate, upon oath, according to

your best judgment, the damages done to A. B. by the [horse or oxen, as the case may be,] owned or claimed by [C. D., or owner unknown,] and make due return to me within twenty-four hours, with your doings therein; first giving the said A. B. reasonable notice of the time when you will view the place where the damages were done.

Given under our hands this — day of —, 18 .

O. P., Pound Keeper.

RETURN OF THE APPRAISERS.

Pursuant to this warrant, the undersigned, being first sworn to the faithful performance of the trust to which we were appointed, and having given said A. B. reasonable notice as required, do hereby certify that we have viewed, and do estimate said damages at — dollars and — cents, and no more.

E. F. } Appraisers.
G. H. }

B. [date] 18—.

And said persons, being first sworn, shall give reasonable notice to the impounder, and the owner of such beast, if known and resident in the town, of the time appointed for the view, and proceed to estimate damages accordingly; and make return to the pound keeper of their doings, in writing under their hands. The oath may be administered by said pound keeper, or a justice of the peace, and must be certified on the warrant. Ib. § 10.

OATH OF THE APPRAISERS.

You solemnly swear that you will faithfully estimate the damages done to A. B., by the horse [or oxen] of said C. D., according to your best judgment. So help you God.

The form of notice by appraisers may be as follows: —

You are hereby notified that the subscribers have been duly appointed appraisers to estimate the damages done to A. B., by a horse of C. D., of — and will attend at —, on the — day of —, instant, at nine o'clock in the forenoon, for the purpose of estimating said damage.

8. Whoever takes up, as an estray, in any public way or commons, or in his inclosure or possession, any such beast, shall within ten days, if no owner calls for him, commit him, with a certificate as described in section eight, to the pound keeper of his town, who shall carefully keep him till called for by the owner, and all due charges paid, or he is disposed of as hereinafter provided; and whoever does not so commit such beast shall lose the expense of his keeping, and forfeit one per cent. on his value for each week, after the ten days, until he so commits him, or the forfeiture amounts to his value. Ib. § 11.

9. When a pound keeper has so received any beast, he shall forthwith post and keep posted for three days at his dwelling

house, and in two other public places in his town, advertisements by him signed, stating the name of the impounder or finder, the time and cause of impounding, and a brief description of the beast, and notify the owner to pay lawful damages and charges, and take the beast away ; and shall give the like public notice by the town crier, if any in the town. If the value of the beast exceeds ten dollars, a copy of such advertisement shall be inserted in some newspaper, if any, printed in the county. Ib. § 12.

10. FORM OF ADVERTISEMENT BY POUND KEEPER.

Taken and impounded on the — day of —, 18—, in the pound in the town of —, by A. B. of —, a red cow (with other short description) taken up in the highway or field of said A. B. (as the case may be.) And the owner of such beast is hereby notified to pay lawful damages and charges, and take the beast away. Dated this — day of —, 18—.

C. D., Pound keeper of said town.

11. If the beast exceeds ten dollars in value, a copy of the above must be inserted in some newspaper, if any, in the county.

12. When a beast is lawfully impounded as aforesaid, if the forfeiture, damages, and costs are not paid, or the beast replevied, in ten days after the notice, provided in the preceding section, is given, the pound keeper shall, without any other process, sell the beast at public auction, after having posted up in two public places in his town, at least forty-eight hours before the time of sale, notices of the time and place, and cause of sale, with a brief description of the beast ; and for posting such notices and making such sale, he shall have the same fees as constables for similar services. Ib. § 13.

13. FORM OF NOTICE BY POUND KEEPER.

NOTICE.

Taken and impounded on the — day of —, 18—, in the pound in the town of —, by A. B. of —, a red cow (here give a brief description of the beast), and as no person has appeared to pay lawful damages and charges of impounding, although I have duly advertised said beast, stating the name of the impounder, the time and cause of impounding, and notified the owner to pay lawful damages and charges, I shall sell at public auction, at the store of —, in said town, on the — day of —, 18—, at one of the clock in the afternoon, said cow, to pay damages, charges of impounding, and sale. Dated this — day of —, 18—.

C. D., Pound keeper of said town.

14. If the pound keeper is informed, or has reason to believe, that the beast impounded has strayed from a drove, or does not

belong to an inhabitant of the town, he shall adjourn the sale thirty days, and shall publish notice thereof in such papers as in his opinion may give information to the owner, and he shall be allowed a reasonable sum therefor ; and the proceeds of such sale shall be disposed of as hereinafter provided. Ib. § 14.

15. The pound keeper, before making such sale, shall cause the damages, if any are claimed, to be appraised as in section ten, within ten days after giving the notice required by section twelve. Ib. § 15.

16. The pound keeper shall retain his lawful charges and fees, and pay to others their lawful dues, and the balance to the treasurer of his county in thirty days. Such treasurer or his successor shall pay it over at any time within six years, on the written request of any person who proves that he was the owner of the property at the time of sale ; and if he refuses to do so, the claimant may appeal to the county commissioners, whose decision thereon shall be final. If such balance is not claimed in six years, it shall belong to the county. Ib. § 16.

17. The owner of such beast, at any stage of the proceedings before sale, may redeem it on payment of all lawful claims thereon up to the time of his demand to redeem. Ib. § 17.

18. An action to replevy such beasts shall be brought against the impounder or finder, and not against the pound keeper, but a copy of it shall be served on both ; and in other respects the process shall be regulated by chapter ninety-six. If such action is brought after notice of sale and before sale, the sale shall be postponed till it is decided, and no such action can be sustained, unless the writ is served before sale. Ib. § 18.

19. Whoever, in order to prevent the impounding of any beast lawfully in possession of another, and taken for the causes herein mentioned, rescues him, or directly or indirectly causes his escape shall forfeit not less than five nor more than twenty dollars, and be liable to the party injured for the full damages, with charges and costs, which he might receive by impounding the beast. Ib. § 19.

20. Whoever breaks a pound, or otherwise directly or indirectly delivers a beast from the place of his lawful restraint, shall forfeit

to the use of the town not less than ten nor more than fifty dollars ; and be liable to the party injured or impounder in an action on the case for double the damage or forfeiture, which he might have received by impounding the beast ; and when such acts are committed by a minor, or an apprentice, legally bound by deed, such action may be brought against the minor or apprentice, or against his parent or guardian, under whose care he then was. *Ib.* § 20.

21. The pound keeper's fees shall be twenty-five cents for impounding one or more beasts at one time ; twelve cents for recording each certificate or advertisement ; and the same for posting or publishing each advertisement, with four cents a mile for necessary travel. *Ib.* § 23.

22. The party impounding shall have a reasonable sum, to be determined by the pound keeper. *Ib.* § 24.

23. The price for keeping and feeding which the pound keeper shall receive, shall be prescribed by the selectmen, and recorded. *Ib.* § 25.

If one take cattle from the lawful custody of a field driver, this is a rescue, although they are finally impounded. 17 Mass. R. 342.

Upon an indictment for pound breach, the illegality of the distress cannot be shown in the defense. 5 Pick. R. 414.

If any man finds stray cattle in his field, he is not bound to impound them but may drive them off into the highway. 18 Pick. 237.

Swine unlawfully at large upon the highways cannot be impounded on the Sabbath. 4 N. H. R. 153.

A vote of the town to restrain cattle going at large within the limits of the town, is binding on persons not inhabitants, whose cattle are found going at large. A turnpike is a highway, within the meaning of the statute. 4 Pick. R. 258.

The owner of a close is not obliged to fence but against cattle lawfully in the adjoining ground ; and if all his fence be insufficient, yet if cattle do not escape through the insufficient fence, but are turned in, he may lawfully impound them for doing damage. 4 Mass. R. 471.

No action can be maintained by the owner of a field against the owner of cattle rightfully on an adjoining close, and straying therefrom through an insufficient fence upon the field, unless the fence has been divided, and the owner of such cattle is bound thereby to keep the fence in repair ; nor can the cattle be lawfully impounded for that cause. The person taking and impounding cattle without cause, is liable to an action therefor. 14 Maine R. 419.

It is the duty of a party impounding cattle, to feed and water them as often as is required according to the usage of the country and good husbandry. 13 Pick. R. 384.

A private individual who impounds a beast taken doing damage, in a town pound, is not liable for the injury such beast may receive from cattle in the same pound. 9 Pick. R. 14.

By the Revised Statutes, sheep found doing damage to the land of any person are liable to be impounded by him, as a remedy to recover for such damage. That remedy, however, does not accrue, if the sheep, being rightly upon the adjoining land, escaped therefrom through a defect in that distinct part of the division fence, which the person suffering the damage was bound to maintain. 35 Maine R. 26.

The pound keeper is required, in ten days after the notice has been given, to sell the beast, giving forty-eight hours' notice of the time and place and cause of sale. 45 Me. 596.

The "ten days" do not begin to run, until the "three days" have fully expired. The "forty-eight hours' notice" cannot be given during the "ten days". 45 Me. 596.

CHAPTER LXVII.

DIVISION FENCES.

1. All fences, four feet high and in good repair, consisting of rails, timber, boards, or stone walls, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things, which in the judgment of the fence-viewers having jurisdiction thereof, are equivalent thereto, shall be accounted legal and sufficient fences. R. S. Ch. 22, § 1.

2. The occupants of lands inclosed with fences shall maintain partition fences between their own and the adjoining inclosures, in equal shares, while both parties continue to improve them. Ib. § 2.

3. If any party neglects or refuses to repair or rebuild any such fence, which he ought to maintain, the aggrieved party may complain to two or more fence viewers of the town where the land is situated, who, after due notice to such party, shall proceed to survey it, and if they determine that it is insufficient, they shall signify it in writing to the delinquent occupant, and direct him to repair or rebuild it within such time as they shall judge reasonable, not exceeding thirty days. If the fence is not repaired or rebuilt accordingly, the complainant may make or repair it. Ib. § 3.

The form of such complaint may be, in substance, as follows:—
To A. B. and C. D., fence viewers of the town of ———, in the county of ———.

Complains E. F., of said ———, that G. H., the occupant of a tract of land adjoining that improved by your complainant, has failed to build and repair that part of the fence between our respective adjoining inclosures which of right he ought to maintain, which portion of fence, heretofore divided between us, begins ——— and ends at ———. Wherefore your complainant prays that you would, after notice, proceed to survey the same, and further to do what justice and law require.

Dated at ———, this ——— day of ———, 18—.

E. F.

The form of notice to repair, after survey, by the fence viewers, may be as follows:—

To G. H., of ———, in the county of ———.

Whereas complaint has been made to us, the subscribers, fence viewers of the town of ———, in said county, on the ———, by E. F., of said ———, to survey the fence between the land of E. F. and yourself, situate in said ———, beginning at ——— and ending at ———, which has been heretofore divided between you; upon which complaint we appointed ——— the ——— day of ———, at ——— o'clock, A. M., at the ———, as the time and place of hearing, and caused you to be duly notified thereof; and having attended and examined said fence, and heard the parties and their evidence, we determine that the part of said fence, beginning at ——— and ending at ———, which you are bound to keep in repair, is insufficient; and direct you to cause the same to be put in good repair within thirty days from the date hereof.

Given under our hands, this ——— day of ———, A. D. 18—.

} Fence Viewers of ———.

4. When the complainant has completed such fence, and after notice given, it has been adjudged sufficient by two or more of the fence viewers, and the value thereof, with the fence viewers' fees certified under their hands, he may demand of the occupant or owner of the land, where the fence was deficient, double the value and fees thus ascertained; and in case of neglect or refusal to pay the same for one month after demand, he may recover the same by an action on the case, with interest at the rate of one per cent. a month, and if the delinquent owner or occupant repairs or rebuilds such fence without paying the fees of the fence viewers, certified by them, double the amount thereof may be recovered by the complainant as herein provided. Ib. § 4.

5. When the occupants or owners of adjacent lands disagree respecting their rights in partition fences and their obligation to maintain them, on application of either party, two or more fence viewers of the town, where the lands lie, after reasonable notice to each party, may in writing under their hands assign to each his share thereof, and limit the time in which each shall build or repair his part of the fence, not exceeding thirty days. Such assignment and all other assignments of proprietors of partition fences herein provided for, recorded in the town clerk's office, shall be binding upon the parties, and they shall thereafter maintain their part of said fence. If such fence has been built and maintained by the parties in unequal proportions, and the fence

viewers adjudge it to be good and sufficient, they may, after notice as aforesaid, in writing under their hands, award to the party who built and maintained the larger portion, the value of such excess, to be recovered in an action on the case against the other party, if not paid within six months after demand. The parties are to pay the fees of the fence viewers equally, and in case of neglect by either party, the same may be recovered by the party paying, in an action on the case, double the amount of his proportion of said fees. Ib. § 5.

FORM OF NOTICE BY FENCE VIEWERS.

To Mr. ———, of the town of ———. Whereas ——— has made application to us, fence viewers of the town of ———, stating that a disagreement has arisen between him and you respecting your rights in and your obligations to maintain a partition fence between your land and the land of said ———; we therefore notify you that we shall be at ———, on ——— the ——— day of ———, at ——— o'clock, to assign to each party his share of said fence, at which time and place you will attend.

Dated at ———, 18—.

———— } Fence Viewers.
———— }

FORM OF ASSIGNMENT BY FENCE VIEWERS.

Whereas a disagreement has arisen between A. B., of ———, and C. D., of ———, respecting their rights in a partition fence and obligations to maintain the same; and whereas we, the subscribers, fence viewers of the town of ———, upon application to us by said ———, have given reasonable notice to each party to attend at the time and place when and where the assignment should be made; wherefore, having viewed the premises, we do hereby assign to each of said parties his share of said fence, to wit:

The said ——— shall ———, &c.

Given under our hand this ——— day of ———, 18—.

———— } Fence Viewers.
———— }

6. If any party refuses or neglects to build and maintain the part thus assigned him, it may be done by the aggrieved party; and he shall be entitled to the double value and expenses ascertained. Ib. § 6.

7. All division fences shall be kept in good repair throughout the year, unless the occupiers of adjacent lands otherwise agree. Ib. § 7.

8. When from natural impediments, in the opinion of the fence viewers having jurisdiction of the case, it is impracticable or unreasonably expensive to build a fence on the true line between the adjacent lands, and the occupants disagree respecting its position, on application of either party as provided in section five, and after

notice to both parties, and a view of the premises, they may determine, by a certificate under their hands communicated to each party, on which side of the true line, and at what distance, or whether partly on one side and partly on the other, and at what distances, the fence shall be built and maintained, and in what proportions by each party; and either party may have the same remedy against the other as if the fence was on the true line. Ib. § 8.

9. When adjacent lands have been occupied in common without a partition fence, and either party desires to occupy his in severalty, or when it is necessary to make a fence running into the water, and the parties liable to build and maintain it disagree, either party may have the line divided on application to the fence viewers of the town; who shall proceed as is provided in section five, except that the fence viewers may allow a longer time than thirty days for building the fence, if they think proper, having regard to the season of the year. In other respects the remedy for the aggrieved party shall be the same as there provided. Ib. § 9.

10. When one party ceases to improve his land, or lays open his inclosure, he shall not take away any part of his partition fence adjoining the next inclosure improved, if the owner or occupant thereof will pay therefor what two or more fence viewers, on due notice to both parties, determine to be its reasonable value. Ib. § 10.

FORM OF AN APPRAISEMENT OF THE VALUE OF SUCH PARTITION FENCE.

We, the subscribers, fence viewers of the town of —, at the request of —, to appraise his part of a partition fence, on lands adjoining the inclosure of —, which he has ceased to improve, have given due notice to both parties, and do determine the reasonable value thereof to be —.

Dated the — day of —, 18 .

— — } Fence Viewers.

11. When any land, which has been uninclosed, is afterwards inclosed, or used for pasturing, its occupant or owner shall pay for one-half of each partition fence on the line between his land and the enclosure of any other occupant or owner, and its value shall be ascertained in writing, if the parties do not agree, by two or

more of the fence viewers of the town where such fence stands ; and after the value is so ascertained, on notice to such occupant or owner, if he neglects or refuses for thirty days, after demand, to pay it, the proprietor of the fence may have an action on the case for such value and the costs of ascertaining it. *Ib.* § 11.

12. If the line on which a partition fence is to be made or to be divided, is the boundary between two or more towns, or partly in one town and partly in another, a fence viewer shall be taken from each town. *Ib.* § 12.

13. When a fence between the owners of improved lands is divided either by fence viewers, or by the written agreement of the parties recorded in the town clerk's office where the land lies, the owners shall erect and support it accordingly ; but if any person lays his lands common, and determines not to improve any part of them adjoining such fence, and gives six months' notice to all occupants of adjoining lands, he shall not be required to maintain such fence while his lands so lie common and unimproved. *Ib.* § 13.

14. Nothing herein extends to house lots, the contents of which do not exceed half an acre ; but if the owner of such lot improves it, the owner of the adjacent land shall make and maintain one half of the fence between them, whether he improves it or not ; nor shall the provisions of this chapter make void any written agreement respecting public fences. *Ib.* § 14.

Ditches on salt marshes are subject to the jurisdiction of fence viewers, relating to their division, maintenance, width and depth, and are subject to the same forms of fences. See R. S. Ch. 22, §§ 40, 41, and 42.

CHAPTER LXVIII.

LOST GOODS.

1. It is the duty of the finder of lost money or goods of the value of three dollars or more to give notice thereof in writing to the clerk of the town where they are found, and post up notifications thereof in some public place in the same town, and if the value of the same is ten dollars or more, the same shall be cried and notice given as aforesaid in two towns adjoining, in addition; and every finder of lost goods of the value of ten dollars or more, within two months after finding, shall procure a warrant from the town clerk, or a justice of the peace, directed to two persons to appraise said goods under oath. See R. S. Ch. 98.

2. FORM OF NOTICE TO TOWN CLERK.

To the town clerk of the town of —.

You are hereby notified that I found in the highway in said town, on the — day of —, 187 , (here name the goods or money) of the value of more than three dollars.

Dated this — day of —, 187 .

A. B.

3. FORM OF NOTICES TO BE POSTED UP BY FINDER.

NOTICE.

I hereby give notice that I found in the highway in the town of —, on the — day of —, 187 , (here name the goods or money) of the value of more than three dollars.

Dated this — day of —, 187 .

A. B.

4. FORM OF WARRANT TO APPRAISE LOST GOODS.

[Seal.] —, ss. To A. B. and C. D., of —.

GREETING.

Upon the application of E. F., of —, to me, G. H., town clerk of said —, you are hereby appointed to appraise, upon oath, at the true value thereof in money, according to your best judgment (here describe the goods or money) found by the said E. F., at —; and to make due return of your doings, with this warrant, into the town clerk's office, in said —, within seven days from the date hereof.

Given under my hand and seal this — day of —, A. D., 187 .

G. H., Town Clerk.

—, ss. Then the above named A. B. and C. D. made oath that they would faithfully perform the service required by the above warrant. Before me.

I. J., Justice of the Peace.

5. FORM OF THE APPRAISAL TO BE MADE ON THE WARRANT.

The subscribers, appointed appraisers by the within warrant, have carefully examined the property set forth therein, and do upon oath appraise the value to be — dollars and — cents, and no more.

Dated at —, aforesaid, the — day of —, A. D. 187.

— — } Appraisers.
— — }

CHAPTER LXIX.

AUCTIONS AND AUCTIONEERS.

1. Municipal officers to license auctioneers and keep a record thereof. See R. S. Ch. 34.

FORM OF LICENSE.

We, the subscribers, selectmen of the town of ———, in the county of ———, hereby license A. B., a suitable inhabitant of said county, to be an auctioneer for one year from this date, in any town in said county.

Given under our hands this — day of ———, 187 .

—————
 ———— } Selectmen of ———.
 ————

CHAPTER LXX.

PAWNBROKERS AND INTELLIGENCE OFFICES.

1. Municipal officers may license pawnbrokers and intelligence offices. See R. S. Ch. 35, §§ 1 and 6.

FORM OF LICENSE TO PAWNBROKER.

We, the subscribers, selectmen of the town of ———, in the county of ———, hereby license A. B., of ———, a person of good moral character, to be a pawnbroker in said town of ———, for one year from the date hereof, unless sooner removed by us or our successors in office for a violation of law, regulating his business as pawnbroker.

Given under our hands this — day of ———, 187 .

—————
 ———— } Selectmen of ———,
 ————

FORM OF LICENSE TO KEEP AN INTELLIGENCE OFFICE.

We, the subscribers, selectmen of the town of ———, in the county of ———, hereby license A. B., of ———, a suitable person, to keep an office in said town of ——— for the purpose of obtaining employment for domestics servants, or other laborers, (except seamen) and for giving information relating thereto, and doing the usual business of intelligence offices, for the term of one year from the date hereof, unless sooner revoked, after notice and for cause, by us or our successors in office, he having paid to us one dollar therefor.

Given our hands this — day of ———, A. D. 187 .

—————
 ———— } Selectmen of ———.
 ————

CHAPTER LXXI.

SELECTION AND SERVICE OF JURORS, R. S. Ch. 106.

1. The sheriff on receiving venires for jurors shall immediately send them to the constables of the towns where directed, and each constable on receipt thereof shall notify the inhabitants of the town qualified to vote for representatives, and especially the municipal officers and town clerk, by posting up notices in two public and conspicuous places in said town at least four days before such meeting, to assemble and be present at the draft of the jurors called for; which shall be six days at least, before the time when the jurors are ordered to attend court. R. S. Ch. 106, § 9.

2. FORM OF NOTICE OF CONSTABLE.

In the name of the State of Maine, I hereby notify the inhabitants of the town of _____, qualified to vote in the election of representative, to assemble and be present at _____, on the _____ day of _____, at _____ o'clock in the _____ noon, for the draft and selection of _____ grand jurors and _____ traverse jurors, to serve at the next supreme judicial court to be holden within and for the county of _____, on the _____ day of _____, agreeably to a writ of venire, from _____ to me directed.

Dated, _____, _____, Constable of _____.

3. FORM OF RETURN OF NOTICE.

This certifies that, on the _____ day of _____, I notified the inhabitants of the within named town to assemble and be present at _____, on the _____ day of _____, at _____ o'clock in the _____ noon, for the purpose within named, by posting notices, of which the within is a true copy, in two public and conspicuous places in said town, one at _____, and one at _____, being four days before such meeting, and being six days before the time when the within jurors are ordered to attend the within named court, and on the same day I notified the selectmen and town clerk of said town to attend at the time and place, and for the purposes within mentioned.

_____, Constable of _____.

4. The constables shall notify the persons thus drawn four days at least before the sitting of the court, by reading the venire and endorsement thereon to them, or leaving at their usual place of abode a written notice that they have been drawn, and of the time and place of the sitting of the court where they are to attend, and make a seasonable return of the venire, with his doings thereon. Ib. § 14.

5. FORM OF NOTICE TO JUROR.

To ———, of ———.

You are hereby notified that you have been drawn as a grand juror (or a traverse juror, as the case may be) from the town of ———; and you are to attend at the ——— court for the county of ———, on ———, at ——— o'clock in the ———noon. Fail not, at your peril.

Dated, ———. ———, Constable of ———.

6. FORM OF INDORSEMENT ON VENIRE.

———, 18—.

This certifies that, by virtue of the within venire, I notified the inhabitants of the town of ——— qualified to vote in the election of representatives to assemble and be present at the town house in said town, on the ——— day of ———, at ——— o'clock in the ———noon, at the draft and selection of persons to serve as ——— jurors at ——— court next to be holden at ———, in the county of ———; by posting notices in two public and conspicuous places in said town, to wit: one at ———, and one at ———, four days at least before such meeting, and six days at least before the time when the within named jurors are ordered to attend the within named court; and on the same day that I posted said notices, I also notified the selectmen and town clerk of said town to attend at the time and place, and for the purpose aforesaid as within mentioned; that at the time and place of meeting as aforesaid, ——— were drawn out of the jury box, as the law directs, to serve as ——— jurors at said court, and that I duly notified the said ———, on the ——— day of ———, being four days at least before the sitting of said court, severally of their draft and selection, and of the place, day and hour at which they must attend said court.

Dated, ———.

———, Constable of ———.

CHAPTER LXXII.

CORONERS INQUESTS.

1. Any coroner shall hold inquests on dead bodies of such persons only as appear or are supposed to come to their death by violence, and not when it is believed their death was caused by casualty; and as soon as he is notified of any such dead body in his county, he shall make out his warrant in the following form, directed to any of the constables of the same town or adjoining town in his county, requiring him forthwith to summon a jury of six good and lawful men of their towns to appear before him at the time and place fixed in the warrant; (R. S. Ch. 139, § 1.)

[L. s.] To either of the constables in the town of—, in the county of —, GREETING:

In the name of the State of Maine, you are hereby required immediately to summon six good and lawful men of said town of—, to appear before me, one of the coroners of the county of —, at the dwelling house of —, (or at the place called—,) within said town of—, at the hour of—, then and there to inquire upon and view the body of —, there lying dead, how and in what manner he came to his death. Fail not herein at your peril.

Given under my hand and seal, at —, the — day of —, in the year eighteen hundred and—. S. F.

2. The constable, to whom such warrant is directed and delivered, shall forthwith execute it; repair to the place where the dead body is at the time appointed, and make return of the warrant with his doings to said coroner, or he shall forfeit the sum of ten dollars; and every person summoned as a juror, neglecting to attend at the time and place appointed, without reasonable excuse, shall forfeit and pay seven dollars, to be recovered in an action of debt in the name of the coroner or the county, and for the use of the county. *Ib.* § 2.

3. The coroner shall administer to the jurors who appear in view of the body the following oath: (*Ib.* § 3.)

“You solemnly swear that you will diligently inquire, and true presentment make, on behalf of this state, how, when, and in what manner, the person whose body here lies dead came to his death, and you shall return to me a true inquest thereof, according to your knowledge and the evidence laid before you. So help you God.”

4. If the six jurors summoned do not appear as commanded, the coroner may require the constable, or any other person he appoints, to return jurors from the bystanders to complete the number. *Ib.* § 4.

5. The coroner may issue subpoenas for witnesses, to be served as in other cases, and shall administer to them an oath as follows: (*Ib.* § 5.)

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

6. The evidence of all witnesses shall be in writing, and signed by them; and if it relates to the trial of any person concerned in the death, the coroner shall bind such witnesses by recognizance, in a reasonable sum, for their personal appearance at the next supreme judicial court to be held in the same county, to give their testimony accordingly; and if they do not so recognize, he shall

commit them to prison, and return to the same court the inquisition, written evidence, and recognizance by him taken. Ib. § 6.

7. After the coroner has sworn the jurors, he shall charge them to declare whether the person died by felony, mischance, or accident; if by felony, who were principals and accessories, the instrument employed, and all important circumstances; if by mischance, or by his own hand, in what manner, and all attending circumstances; and make proclamation for all persons who can give any evidence to draw near and be sworn. Ib. § 7.

8. The jury, after examining the body, hearing the evidence, and making all useful inquiries, shall draw up and deliver to the coroner their verdict in writing under their hand and seals in substance as follows: (Ib. § 8.)

An inquisition held at —, within the county of —, the — day of — in the year —, before S. F., one of the coroners of said county, upon view of the body of —, there lying dead, by the oaths of —, good and lawful men, who, being charged and sworn to inquire for the state, when, how, and by what means the said — came to his death, upon their oaths say: [*then insert how, when, and by what means, and with what instrument he was killed.*] In testimony whereof, the said coroner and the jurors of the inquest have hereunto set their hands and seals, the day and year abovesaid.

9. If any person, charged by the inquest with causing the death of such person, is not then in custody, the coroner shall have the same power as a justice of the peace to issue a warrant for his apprehension, to be returned before any judge or justice of the peace, who shall proceed therein according to law. Ib. § 9.

10. Every coroner within his county, after the return of an inquisition of the jury upon view of the dead body of a stranger, shall bury the body in a decent manner; and all the expenses attending the burial, and the expenses of the inquisition, shall be paid to the coroner out of the state treasury, if the coroner certifies under oath that the deceased was a stranger not belonging to the state, according to his best knowledge and belief; otherwise, the expenses of burial shall be paid to the coroner by the town where the body was found, and repaid to such town by the town to which he belonged in the state; and the expense of the inquisition by the county. Ib. § 10.

11. The coroner, whether an inquest is held or not, jurors,

witness, and any other person required to summon jurors or witnesses, shall be allowed, in addition to the regular fees, a sum sufficient to make a reasonable compensation for all their services and expenses; and the coroner shall pay to the party giving him notice that a dead body has been found, and to the person who picked up such dead body, and to the person who has had the care of such body till taken charge of by him, a suitable compensation, which shall be reimbursed as for personal services. *Ib.* § 11.

CHAPTER LXXIII.

MARRIAGE AND ITS SOLEMNIZATION. (R. S. Ch. 59.)

1. Every justice of the peace appointed for a county or for the state and residing therein; and every ordained minister of the gospel, and every person licensed to preach by an association of ministers, religious seminary, or ecclesiastical body, duly appointed and commissioned for that purpose by the governor and council, may solemnize marriages within the limits of their appointment. *Ib.* § 11.

2. Every person, commissioned as aforesaid, shall keep a record of all marriages solemnized by him, and within one year after the date of each marriage, make a return to the clerk of the town where the marriage is solemnized, certifying the names of the parties, the places of their residence and the date of the marriage; and for any neglect to do so he shall forfeit the sum of fifty dollars. *Ib.* § 15.

3. No marriage, solemnized before any known inhabitant of this state professing to be a justice of the peace, or an ordained or licensed minister of the gospel duly appointed and commissioned, shall be void, nor shall its validity be affected by any want of jurisdiction or authority in the justice or minister, or by any omission

or informality in entering the intention of marriage, if the marriage is in other respects lawful, and consummated with a full belief, on the part of either of the persons married, that they are lawfully married. *Ib.* § 17.

4. No form of words is established for the solemnization of marriage; and if the parties themselves enter into an agreement to become husband and wife, in the presence of a justice or minister, he assenting to act on the occasion in his official capacity, this is sufficient; otherwise if he does not so consent.—7 Mass. 48; 1 Mass. 240.

5. The following is a short and convenient form for solemnizing marriage. The parties standing may be addressed as follows:

You, A. B. and C. D., having entered into an agreement to become husband and wife, and having produced to me a certificate according to law, will now please to join your hands.

You now promise mutual fidelity in the relation of husband and wife, agreeably to the laws of God and man, so long as you both shall live.

I now pronounce you husband and wife, married according to the laws of the state. Those whom God has joined together, let no man put asunder.

6. FORM OF CERTIFICATE.

To all whom it may concern:

This is to certify that A. B. and C. D., both of E., in the county of F., and State of Maine, were joined in marriage, at E., on the — day of —, A. D., 18 . By me, G. H., Justice of the Peace.

7. The clerk of every town shall return to the clerk of the judicial courts for his county a transcript of all the records of marriages made upon his books during the year for which he was clerk; and said clerk of the courts shall record the same in a book to be kept for that purpose; and be allowed therefor from the county treasury at the rate of twelve cents a page. *Ib.* § 19.

8. If any person forbidden, or any minister or other person, who is not authorized to solemnize marriages, join any persons in marriage, he shall be punished by confinement to hard labor in the state prison for a term not exceeding five years, or by fine, not exceeding one thousand dollars. *Ib.* § 14.

9. FORM OF COMPLAINT FOR SOLEMNIZING A MARRIAGE WITHOUT AUTHORITY.

A. B. of B. upon his oath complains, that C. D. of B., &c., on the — day of — at said B., did unlawfully, knowingly, and wilfully join in mar-

riage and solemnize matrimony between E. F., late of, &c., and one G. H., then a single woman, he, the said C. D., not being authorized and empowered to solemnize marriages by virtue of the laws of this state, nor being authorized thereto, in any other manner, or by any other legal power and authority whatever; against the peace of said state, and contrary to the statute, &c.

10. If any town clerk makes out and delivers to any person a false certificate of the entry of the intention of matrimony, knowing it to be false in any particular, he shall be fined one hundred dollars or imprisoned six months in the county jail. Ib. § 18.

11. FORM OF COMPLAINT FOR MAKING FALSE CERTIFICATE OF PUBLISHPMENT.

That C. D. of L., on ——— at said L., being then and there town clerk of said town of L., did make out and deliver to one N. R., a false certificate of the publication of the banns of matrimony between the said N. R. and one S. H., knowing the same to be false, and that the banns of matrimony between the said N. R. and S. H. had not been published as required by the statutes of this state, and as certified by said C. D. in said false certificate against the peace, &c.

CHAPTER LXXIV.

INQUESTS IN CASES OF SUSPECTED INCENDIARISM.

1. When any building or other property is destroyed by fire, and within ninety days thereafter, a complaint on oath is made by the mayor of the city or the municipal officers of the town in which the fire occurred, to any justice of the peace authorized to act therein, or any municipal or police judge therein, alleging that reasonable grounds exist for believing that such fire was not accidental in its origin, but was caused by design, such justice or judge shall forthwith issue his warrant to a constable of the town where such property was destroyed, requiring him to summon immediately, six good and lawful men of the county, to appear before such judge or justice, at the time and place expressed in the warrant, to inquire when, how and by what means said fire originated. And in case of the non-appearance of

any person so summoned, the constable shall, by order of said judge or justice, return some person from the bystanders to complete said number. R. S. Ch. 26, § 29.

2. FORM OF COMPLAINT.

STATE OF MAINE.

O., ss. To O. C. D., Esquire, one of the Justices of the Peace within and for said county of O.

A. B., C. D., and E. F., Selectmen of the town of ——— in the county of ——— aforesaid, on oath, complain and give said justice to understand, that on ———, at ——— in said county, the dwelling-house of one ———, there situated, was then and there destroyed by fire, and that reasonable grounds exist for believing that said fire was not accidental in its origin, but was caused by design, against the peace of said State, and contrary to the statute in such case made and provided,

Wherefore, said A. B., C. D., and E. F. pray that a jury may be summoned to inquire when, how, and by what means said fire originated.

Dated this ——— day of ———, 18—.

A. B. }
C. D. } Selectmen of ———.
E. F. }

STATE OF MAINE.

O., ss. ———, 18—. Personally appeared A. B., C. D., and E. F., and made oath to the truth of the above complaint.

Before me,

O. C. D., Justice of the Peace.

3. WARRANT.

STATE OF MAINE.

To either of the constables in the town of ———, in the county of O.,

GREETING.

[L. s.] You are hereby required immediately to summon six good and lawful men of said county of ———, to appear before me, O. C. D., one of the justices of the peace for the said county of ———, at ———, on ———, at ——— o'clock in the ———noon, to inquire when, how, and by what means the fire named in the above complaint originated. Fail not herein at your peril.

Given under my hand and seal, at ———, the ——— day of ———, in the year eighteen hundred and seventy ———.

O. C. D., Justice of the Peace.

4. RETURN.

O., ss., A. D. 18—. By virtue of the within warrant, I have summoned [here name the persons], all good and lawful men of the county of ———, to appear at the time and place and for the purpose specified in the within warrant.

O. P., Constable of ———.

5. Oath of jury to be made in view of the land on which such property was destroyed, and in the following form :

You solemnly swear that you will diligently inquire and true presentment make, in behalf of this state, when, how, and by what means, the fire which has here occurred was caused ; and that you will return a true inquest according to your best knowledge, and such evidence as shall be laid before you. Ib. § 30.

6. Witnesses to be summoned and sworn by judge or justice, and testimony to be reduced to writing by the presiding judge or justice, or some person by his direction, and by them subscribed. *Ib.* § 31.

SUBPENA FOR WITNESSES.

O., ss. To ———.

GREETING.

[L. s.] You are required in the name of the State of Maine to make your appearance before me, O. C. D., Esquire, one of the justices of the peace in and for said county of —, at — on —, at — o'clock in the — noon, to give evidence of what you know relating to the origin of the burning of the dwelling-house of —, situated in — in the county of —, destroyed by fire the — day of —, 18—.

Hereof fail not, as you will answer your default under the pains and penalties of the law in that behalf made and provided.

O. C. D., Justice of the Peace.

Dated at —, this — day of —, A. D. 18—.

7. OATH OF WITNESS.

You solemnly swear that the evidence that you shall give in this inquest, of what you know concerning the origin of the fire of which inquiry is to be made, shall be the truth, the whole truth, and nothing but the truth. So help you God.

8. VERDICT OF JURY. (*Ib.* § 32.)

An inquisition held at — within the county of —, on, &c., before O. C. D., a justice of the peace for said county of —, by the oaths of —, good and lawful men, who being charged and sworn to inquire for the State, when, how, and by what means the fire of the dwelling-house of —, situated in — in said county of —, destroyed on the — day of —, upon their oaths say, [here state the cause of the fire.] In testimony whereof, the said jurors of the inquest have hereunto set their hands the day and year above written.

CHAPTER LXXV.

FORMS AND PROCEEDINGS OF TRIAL JUSTICES IN THE TRIAL AND DISPOSITION OF CRIMINAL CASES.

1. The Revised Statutes, Ch. 132, in criminal cases, describes and defines the general jurisdiction, powers and duties of trial justices, — (§§ 2, 3, 4, 7,) in receiving complaints, — (§§ 5, 6,) issuing warrants, — (§§ 7, 11, 12, 13, 14, 17, 21,) summoning witnesses, — (§§ 8, 10,) trials and appeals, — (§§ 15, 16,) and fines and costs (§§ 9, 17, 18, 19, 20.

2. The Revised Statutes, Ch. 133, in the commencement of proceedings in criminal cases, describes and defines the powers and duties of trial justices in issuing processes (§ 2), in recognizing persons charged with crime in the county where arrested (§ 6), in the examination of offenders (§§ 9, 10, 11, 12, 13), in committing or binding over the accused (§§ 14, 15, 16, 17), and in discontinuing prosecutions (§§ 18, 19).

3. The Revised Statutes, Ch. 130, defines and describes the powers and duties of trial justices in the prevention of crimes (§§ 1 to 9), and the right to order sureties to keep the peace, without complaint, of whoever in their presence, makes an affray, &c. (§§ 9, 10).

4. Revised Statutes, Ch. 131, defines the jurisdiction of crimes (§§ 1, 2, 3, 4, 5), and for what omissions complaints shall not be quashed (§ 12).

5. **WHEN TRIALS SHOULD TAKE PLACE.**—When a person is arrested upon a criminal charge and brought before a magistrate, it becomes his duty to complete the trial or examination of all concerned, and to convict, discharge, bail, or commit the individual charged, as soon as the nature of the case will permit. But he is allowed a reasonable time for this purpose, or the time necessary for a full investigation of the case, before coming to a final decision, having impartial regard to the rights both of the government and of the party accused.

6. The proceedings of a trial justice on the trial are: 1, Arraignment; 2, Plea; 3, Trial; 4, Judgment and its execution.

7. **ARRAIGNMENT.**—The arraignment is to call the prisoner to answer the matter charged upon him in the complaint. He is first called by his name, that it may appear by his answer that he acknowledges himself to be the person charged, and by the right name.

8. **PLEA.**—After the complaint is distinctly read to the prisoner, he is asked whether he is guilty or not guilty. The plea of guilty is either express or implied. The express confession of the crime, by the direct plea of guilty, may be received after the plea of not guilty is recorded, whenever the defendant wishes to with-

draw his plea of not guilty, and confess the crime. The plea of guilty does not preclude the justice from examining witnesses to ascertain the aggravation or mitigating circumstances of the guilt, and this should be done in order to satisfy the justice whether the party ought to be sentenced or bound over.

9. An implied confession is when, in small offences, generally assaults and batteries that are not of an aggravated nature, a defendant does not directly own himself guilty, but tacitly admits it by throwing himself upon the mercy of the court, and desiring to submit to a small fine. This the justice may either accept or decline as he thinks proper. — 9 Pick. 206. If he grants the request, his entry is, “the defendant will not contend with the state but submits to its grace.” The difference in effect between an express and an implied confession of guilt, is that a plea of guilty may be given in evidence against the defendant in a civil action for the same injury, which cannot be done when the confession before the justice is only an implied acknowledgment of guilt.

10. CONFESSIONS.—In cases of crimes not within the jurisdiction of a justice for trial, though the question may be asked, it is doubted whether he can require the prisoner to make any answer to the complaint or charge. And he ought to be cautioned, that he is not bound either to accuse himself or confess his guilt; and that every confession or admission of that nature may be produced in evidence against him on his trial.—1 Chit. Cr. L. 85. A free and voluntary confession of a person accused of an offence, whether made before he is arrested, on a judicial examination, or at any other time and place, and whether in writing or not, is strong evidence against him, and if satisfactorily proved, sufficient to convict without any corroborating circumstances. — Phil. Ev. 423; 9 Pick. 503.

11. STANDING MUTE.—By Ch. 134, § 11, “when any person, indicted for any crime or offence, shall stand mute and make no answer to the charge, the court shall order the plea of not guilty to be entered, and the same proceedings shall be had as if he pleaded not guilty.” Trial justices are, no doubt, authorized to conform to this rule in cases before them.

12. DILATORY AND SPECIAL PLEAS.—Instead of the general issue, the party may plead to the jurisdiction of the justice, where he undertakes to try and decide upon an offence of which he has no cognizance. Or he may demur ; but the same advantage may be taken upon a plea of not guilty, or in arrest of judgment. He may also plead in abatement, as for defect in the form of the complaint or warrant. But there is little advantage accruing to the party from pleas to the jurisdiction or in abatement, because if the pleas are allowed, a new complaint will be made, and another process thereupon issued against him ; which ought always to be made ready immediately, and even before the party is discharged upon the defective process, in order to prevent his escape from punishment.—Davis's Crim. Jus. p. 109. And he may also plead *in bar*, either a former acquittal, a former conviction, or a pardon. But if a defendant plead in abatement, or specially in bar, and an issue in fact be thereupon determined against him, he will have lost the benefit of a trial of the offence itself, and sentence may be pronounced as though he had been regularly convicted. But it is in the discretion of the court to allow him still to plead not guilty ; and this discretion they will generally exercise in favor of the defendant.—1 Chit. Cr. L. 435 ; Davis's Crim. Jus., p. 111.

13. ISSUE.—In most cases, of course, the plea of the prisoner to the charge contained in the complaint, will be the general issue of not guilty.

14. TRIAL.—This plea having been duly made and entered, the justice will proceed to the examination of witnesses. They must be sworn and examined in the presence of the accused party, who has a constitutional right “to be confronted by the witnesses against him.”

15. FORM OF OATH OF WITNESSES.

You swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth ; so help you God.

16. FORM OF AFFIRMATION.

You affirm that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth ; this you do under the pains and penalties of perjury.

17. In case of an adjournment of an examination the justice

may take the recognizance of the party accused for his personal attendance, except in capital offences, in which case he shall commit to prison. In taking such recognizance, the justice should fix such penalty, and require such sureties as will prevent the escape of the criminal.

But when the postponement is for a short time, or even for several days in cases when the jail is at a distance from the residence of the justice, he may from time to time verbally remand the prisoner into the custody of the officer if necessary, to be kept in some safe and convenient place. This power has always been exercised at common law, and is presumed not to be taken away by the statute provisions above recited. 1 Chit. Cr. L. 73.

18. CONTEMPT OF COURT.—If pending the examination, the prisoner or any other person insult the magistrate, he may be committed, as this is an indictable offence, and without this power no court could exist. Such commitment, however, cannot be to detain the party till he retract, or make personal submission for the offence ; but must be till he be discharged according to due course of law. 1 Chit. Cr. L. 88.

19. COMPOUNDING OFFENCES.—It being the duty of every man to bring offenders to justice, the compounding of any public offence, or stipulating to receive a compensation for suppressing a prosecution by any person having a knowledge of it, is contrary to the common law, as well as the moral law, and is also void and criminal in the parties.—5 East, 298. It is also punishable for a man to receive his goods upon an agreement not to prosecute ; and if he takes money of the thief whereby he escapes, he becomes an accessory to the offence.—1 Hale, 619. The suppression of a prosecution after it has been commenced by him, and thus interfering with the due course of public justice, should therefore never be sanctioned by a magistrate.

20. WHEN BAIL SHOULD BE RECEIVED.—The duty of a magistrate, after having examined into an offence not cognizable by him, is to consider whether it is bailable or not. Crimes not bailable are those “ which now are or have been denominated capital offences since the adoption of the constitution where the proof is

evident or the presumption great, whatever the punishment of the crimes may be.”—Amdt. to Const. art. 2. He is bound to admit to bail persons charged with any inferior offence.

It is an offence at common law for a magistrate to grant bail where it ought to be denied, and it is punishable as a negligent escape; to refuse or delay to bail any person who is entitled to bail, is also an offence, and for which the magistrate is liable in damages to the party injured.—Hawk, b. 2, Ch. 15, §§ 7, 13. But the magistrate is not bound to demand bail, or that the person to be bailed shall find sureties; nor is he bound to forbear committing the party till he shall refuse to find sureties; but may justify a commitment unless the party himself shall tender his sureties. *Ib.* § 14.

21. WHO MAY BAIL.—It is laid down, that in all cases where one justice by his warrant can apprehend, he may bail, in cases where bail is allowable, and that the concurrence of two magistrates is not necessary. 1 Chit. Cr. L. 97.

22. WHAT MUST BE RECITED IN THE RECOGNIZANCE.—In every recognizance entered into before a justice of the peace, he should recite in the condition, so much of the complaint or cause of taking it, as to show that he had legal cognizance of it.—4 Mass. 641; 2 Greenl. 62; 11 Maine, 344; 13 Maine, 136.

23. FIXING THE PENALTY AND RECEIVING SURETIES.—The due discharge of this duty requires great judgment and firmness. To require excessive bail is forbidden by the constitution, (Decl. Rights, § 9,) and may be equivalent to refusing bail. And on the other hand, if the magistrate takes insufficient bail, he is liable to be fined if the criminal does not appear.

24. The amount of the penalty of the recognizance, and the sufficiency of the bail, must necessarily be left, in a great degree, to the discretion of the magistrate. The ability and quality of the prisoner, and the nature of the crime, should always be taken into consideration. It is said, and so is the common practice, that there ought to be at least two sureties; and it is an indispensable rule, that each should be of sufficient ability and property to answer the sum in which he is bound. But when the party charged

is himself a responsible person in point of property, and one surety of equal and unquestionable responsibility it offered, there can be no danger in common cases, in accepting him. Davis's Crim. Jus., p. 184.

25. As there is great responsibility upon the magistrates in these cases, he may, in order to ascertain to his satisfaction the ability of the sureties, examine them upon oath as to the value of their property. And although sureties not possessed of real estate may, doubtless, in some instances, be safely taken by a justice. yet one rule should be generally adopted ; and that is, to require such sureties as are possessed, in their own right, of a clear real estate within the county, to such an amount as that upon a sale of it at public auction, upon a warrant of distress, the full amount of the sum in which the surety was bound may be certainly realized. Davis Crim. Jus. p. 185.

26. Married women and minors cannot be bound as principals or sureties in a sum exceeding twenty dollars, but must procure some person to recognize for them as principal, and other persons as surety to such principal in sums exceeding that amount.—R. S. Ch. 133, § 15. If the justice has been deceived, he may require fresh and better sureties, and may commit the party on his refusal. Insufficient sureties are no sureties. 1 Chit. Cr. L. 100.

27. HOW RECOGNIZANCES ARE TAKEN.—The parties becoming bound need not sign the recognizance. It is a matter of record as soon as it is taken, although only entered in the justice's book, and not made up at large. A copy is afterwards made out and signed by the justice.

28. FORM OF TAKING A RECOGNIZANCE.

You A. B., C. D., and E. F., severally acknowledge yourselves to be indebted to the State of Maine in the respective sums following, to wit: you the said A. B. as principal in the sum of — dollars, and you the said C. D. and E. F. as sureties in the sum of — each, to be levied upon your goods, chattels, lands or tenements, and in want thereof upon your bodies, if default be made in the performance of the condition following: The condition of this recognizance is such, that if the said A. B. shall personally appear at the — court — to be held at —, within and for the county of —, on the — Tuesday of — next, and answer to such matters and things as may be objected against him, and more especially to the charge of [here stating the charge] [or to appeal and prosecute his appeal from the sentence inserting it] then this recognizance to be void, otherwise to be in force. With this you are severally content?

29. TIME ALLOWED TO PROCURE BAIL.—If the party is not ready with his bail at the examination, he may be permitted to remain a short time in the custody of the officer before his final commitment, to afford him this opportunity. Davis's Crim. Jus., 188.

30. BAIL AFTER MITTIMUS ISSUED.—If sureties are not procured, and a mittimus is issued and delivered to an officer, it seems the prisoner cannot be bailed until fully committed. It has been decided that a justice of the peace has no authority to take the recognizance of a prisoner, while in custody of the officer under a mittimus issued by another justice, for want of sureties for his appearance at court, and before his commitment to prison.—8 Greenl. 179.

31. BAIL AFTER COMMITMENT.—“Any justice of the supreme judicial court, or any two justices of the peace and quorum for any county, on application of any prisoner committed before verdict of guilty, for a bailable offence, or for not finding sureties to recognize for him, may inquire into the case and admit such person to bail.” R. S. Ch. 133, § 16.

By Ch. 99, § 34, two justices of the peace and quorum, “on application made to them” by the prisoner, or, it would seem, by any other person in his behalf, “may issue a writ of habeas corpus, and cause such person” (confined in jail for a bailable offence or for not finding sureties on a recognizance,) “to be brought before them,” “may inquire into the case,” and “take such recognizance.”

In such cases, the justices of the quorum have power only to bail, not to inquire into the description of the offence or the time and circumstances of its commitment, much less to decide upon it. 10 Maine, 473.

Any person committed for not recognizing to prosecute his appeal may be discharged by any judge or trial justice, on giving the security required. R. S. Ch. 130, § 8.

In every case of this kind, it is the duty of the magistrates admitting a prisoner to bail to send notice of the fact to the jailor, and an order to liberate the prisoner. Davis Crim. Jus. 188.

When a person is brought before justices of the quorum upon a warrant issued by the supreme court, after indictment, to be bailed, notice of the persons offered as bail, if unknown to the justices, should be given to the complainant or public prosecutor that he may object to them. *Ib.*

32. **BAIL AFTER CONVICTION.**—It is not usual or expedient to bail the party between conviction and judgment. And a justice of the peace has no authority to bail a person in execution on a judgment or conviction for an offence, nor one who has absconded after conviction and before sentence, and who has been apprehended upon a new warrant during the vacation, although the offence for which he was originally convicted was bailable. 16 Mass. 198.

33. **RETURN OF RECOGNIZANCE.**—Whenever a justice recognizes a party to appear at any court of record, he must return the recognizance to that court, which should be the next court having jurisdiction of the offence. 4 Mass. 497; 7 Mass. 209.

34. **DISCHARGE OF PRISONER.**—“If, on examination, it shall appear on the whole evidence that no offence has been committed, or that there is not probable cause for charging the prisoner with an offence, he shall be discharged.” Where the crime charged is beyond the jurisdiction of the justice, the prisoner is not to be discharged if there appear “probable” grounds for believing him to be guilty. R. S. Ch. 133, § 13.

Conclusive evidence is not to be required to induce the justice to require him to appear at the proper tribunal and be tried by a jury of his peers.

35. **SENTENCE.**—When it appears that an offence has been committed, that it is within the jurisdiction of the justice, and that the prisoner is guilty beyond all reasonable doubt, the justice may proceed to “award sentence thereon.” R. S. Ch. 133, § 13.

Evidence “to the entire exclusion of every reasonable doubt constitutes full proof of the fact.” 1 Stark. Ev. 478.

It should be remarked, however, that every capricious or fanciful doubt is not a reasonable one. And although “where reasonable doubts exist, they must ever prevail in favor of mercy,” yet “absolute mathematical or metaphysical certainty is not essential,

and in the course of judicial investigations would be usually unattainable." *Ib.* 526.

The sentence is to be awarded according to the nature and aggravation of the offence, and with due regard to the provisions of law relating to it. Under the Revised States, trial justices may "punish by fine, not exceeding ten dollars, all assaults and batteries, and other breaches of the peace declared criminal by any statute or town by-law." In cases of larceny, malicious mischief, &c., by statute, a limited power to imprison is also vested in trial justices. Whenever it is provided that an offender shall be punished by imprisonment and a fine, the court may sentence him to either of those punishments without the other, or to both. R. S. Ch. 135, § 1.

The usual form of a sentence to pay a fine and costs, or costs only, is, that the prisoner stand committed until it is paid. 1 Chit. Cr. L. 721.

36. SURETY OF PEACE.—Every court, before whom any person shall be convicted of an offence, not punishable by death or confinement in the state prison, may, in addition to the punishment by law prescribed, require such person to recognize to the state with sufficient sureties, in a reasonable sum, to keep the peace or be of good behavior, or both, for a term not exceeding two years, and stand committed till he shall so recognize. R. S. Ch. 135, § 4.

37. APPEALS FROM MAGISTRATES.—Any person, aggrieved at a sentence of such magistrate, may appeal therefrom to the next supreme judicial court in the same county, and the magistrate shall thereupon order him to recognize in a reasonable sum, not less than twenty dollars, with sufficient sureties, to appear and prosecute his appeal, and to be committed till the order is complied with. R. S. Ch. 132, § 15.

38. MITTIMUS.—When a prisoner is sentenced to be imprisoned; or when ordered to pay costs, or fine and costs, and he refuses to do so; or when ordered to recognize for keeping the peace and being of good behavior, or for his appearance at a higher court, and he is unable to find sureties;—in either case, the magistrate must make out a mittimus or warrant of commitment,

directing the officer to convey the prisoner to the common jail of the county, and the keeper thereof to receive him into custody. If there are several jails in the county, the mittimus should direct to which of them the prisoner shall be committed. And this should be the nearest prison, unless from its insufficiency, or other cause, it be expedient to order the commitment to be made in one more distant. Where an offender is brought before a justice for an offence perpetrated in another county, it is usual to order him committed in the county where he has taken refuge, and to state the fact in the commitment. But it is laid down that he may be committed to the jail nearest where he is taken, whether it be in the same county or not. In either case, the magistrate ought to give immediate notice thereof to the attorney general or public prosecutor, that he may seasonably obtain an order of court, or *habeas corpus*, for the removal of the offender into the county where he is to be tried. The common jail is also the prison to which offenders are to be committed who are liable to be sent to the house of correction in those counties where no such house is erected.

When the commitment of the prisoner is determined upon, the magistrate may verbally authorize the officer to detain him till he can make out the mittimus. 1 Chit. Cr. L. 73.

Careful attention should be given to the form of the *mittimus* which ought to recite the complaint upon which it is founded, or cause of commitment, for the direction of the officers, and the information of the court or justices who may discharge or bail the prisoner. 4 Mass. 497.

When the commitment is for trial, it must in all cases be for trial at the next term of the court which has jurisdiction of that offence, to be held in the county in which the trial is to be had.

39. WHEN PROSECUTIONS MAY BE DISCONTINUED.—When a person is recognized or committed by a magistrate, or is indicted for an assault and battery, or other misdemeanor, for which the party injured has a remedy by a civil action, except felonious assaults, assaults upon or resistance of an officer of justice in the execution of his duty, and assaults and batteries of such officers, if the injured party appears before the magistrate or court, and in

writing acknowledges satisfaction for the injury, on payment of all costs, the court may stay all further proceedings and discharge the defendant; the magistrate may discharge the recognizance, supersede the commitment by his written order, and discharge the recognizance of the witnesses. R. S. Ch. 133, § 18.

40. Any order discharging recognizances shall be filed in the office of the clerk of the court, at which the party and witnesses are to appear; and an order superseding a commitment shall be delivered to the jailer; and if so filed or delivered, and not otherwise, shall bar all remedy by civil action for such injury. Ib. § 19.

TAXATION OF COSTS.

41. DUTY OF JUSTICES.—The taxation of costs in criminal prosecutions, by justices of the peace, according to law, is a very important duty, and is strictly enjoined by statute. They are not permitted to use any discretion as to the amount of fees or compensation to be taxed, in cases within their own jurisdiction, either for their own services, or those of officers or witnesses. But in cases to be sent up to the supreme judicial court, or the superior court for Cumberland county, it is the duty of the justice to require those who claim extra allowance, to state minutely and specifically the items of it; which he is to insert in the bill of cost, that when it is copied and sent up, it may appear for what particular services or expenses the extra allowance is claimed.

42. No costs shall be allowed by such magistrate to complainants in any capacity; but this shall not prevent the allowance of their fees as officers to police officers and constables complaining under authority of their town, or when it is made their duty to do so. No witness shall be allowed in a criminal case for more than one travel, or for travel and attendance in more than one case at the same time before any judicial tribunal. R. S. Ch. 132, § 9.

43. It is the duty of the justice issuing a warrant to order such persons only to be summoned, as he shall be satisfied can testify to facts material to the issue to be tried. Ib. § 8.

44. No charge of an officer for service, travel or expenses paid,

shall be allowed, unless the items thereof be expressly stated, and the amount of each. R. S. Ch. 116, § 4.

45. The expenses of conveying the prisoner to the place of examination, and of his necessary support, when he is unable to defray them himself, though not provided for by law, are usually charged by the officer; and as they are incurred from necessity and humanity, are, if reasonable, allowed by the court.

46. The expense of carrying a prisoner to jail on a mittimus, is also paid by the government; but this is no part of the bill of costs to be taxed by the justice.

47. Particular caution is required of justices, by statute, in allowing the fees of officers for serving warrants, especially such as are not distinctly prescribed by law, as also charges for aid.

The justice ought to require the officer to state specifically in his return the names of the persons employed as aid, the number of hours that each of them was employed, and the number of miles that each has travelled. And it is the duty of the justice, where the officer refuses or neglects to comply with these requirements, or to state explicitly the items of his charges for service, travel and expenses paid, to refuse to certify the copy of the return. "Extra services," without any specification of their nature, or of the necessity of performing them, will always be rejected by the higher courts, when charged in that manner, in the execution of any precept. Davis Crim. Jus. 207, 210.

48. The costs and fees to be taxed, in a criminal process, before a trial justice, will be embraced in the following form of a "Bill of Costs," and may be taxed in the order arranged therein—the fees expressed will be the statute fees. See R. S. Ch. 116.

FORM OF BILL OF COSTS.

STATE OF MAINE.

Oxford, ss. Bill of costs in the prosecution for the crime of —, upon a complaint made before A. B. trial justice in said county, by C. D. against E. F., who was tried before me, the subscriber, a trial justice in said county, and was —, this — day of —, 18—.

Justice, A. B.,	Complaint and warrant.....	\$0.50
	Subpoena for witnesses.....	.10
" L. M.,	Travel 2 miles one way, 12 cts. a mile.....	.24
	Entering complaint, trial of issue, &c.....	.75
	Mittimus.....	.25
	Appeal.....	.20

Officer, G. H.,	Service of warrant.....	.50
	Travel, 5 miles.....	.20
	Ferriage (reasonable sum).....	
	Toll " ".....	
	Boat hire " ".....	
Aid, O. N.,	Summoning 4 witnesses.....	1.00
	Travel 6 miles.....	.24
	Attending court and keeping prisoner 12 hours.....	.75
	Assisting officer 1 day.....	1.00
Witnesses, N. O.,	Travel 4 miles.....	.16
	Attendance 1 day.....	.50
	Travel 10 miles one way.....	1.20
		<hr/> \$7.59

Examined and allowed, after inquiring of the officer on oath as to the necessity of aid. L. M., Trial Justice.

49. The justice for recognizing persons charged with crimes, &c., and certifying and returning the same shall receive twenty-five cents, to be paid by the person so recognizing. R. S. Ch. 116, § 2.

50. The officer for summoning witnesses in criminal cases, shall receive the same fees as in civil causes; unless in special cases, when the court may increase the fees to what they judge reasonable. Ib.

51. Every justice of the peace or judge of a municipal or police court shall render an account of and pay over all fines and forfeitures by him received upon convictions and sentences before him, accruing to the state or the county, to the treasurer of the county, and when they accrue to the town, to the treasurer of the town, within six months after he receives the same; and for any neglect he shall forfeit and pay, in each instance, double the amount, to be recovered in an action of debt in the name of the county treasurer when they accrue to the state or county, and in the name of the town treasurer, when they accrue to the town. R. S. Ch. 136, § 7.

52. Trial justices shall keep a true and correct docket of all examinations and trials had before them, of persons accused of crime, offences or misdemeanors, setting forth therein a true account of all fines and forfeitures by them imposed, or received upon convictions and sentences; and once in a year to deliver or transmit to the county commissioners of the county in which the trial justices resides, at one of the regular sessions of said commis-

sioners, such docket, or a copy thereof, accompanied by their affidavit, that they have faithfully complied with the requirements of said seventh section ; and it shall be the duty of said commissioners to examine said dockets or copies ; and in any case where they deem it expedient, they may summon any trial justice to appear before them with his original docket and records, giving him not less than ten days notice by personal service, or by leaving at his last and usual place of abode before the time fixed for his appearance ; and when any trial justice shall appear in obedience to such summons, he may be examined on oath relative to his official conduct, and when it is found, upon such examination, that he has faithfully observed the requirements of law, he shall be allowed reasonable compensation for his travel and expense, to be paid from the county treasury ; when any trial justice so summoned shall refuse and neglect to obey the summons, the commissioners may issue a *capias*, and have him brought with his papers before them ; and if he fail to show reasonable cause for his neglect he shall be held to pay the expenses of bringing him before the commissioners, and they may issue a warrant of distress for the collection of the same. See §§ 8 and 9 of Ch. 136, R. S.

53. In cases where prisoners are recognized or committed for trial, or appeal, the bill of costs should be certified and returned with the recognizance and other papers. When the accused is discharged the bill of costs are to be presented to the county commissioners for allowance. R. S. Ch. 132, §§ 19, 20.

54. WHAT PAPERS SHOULD BE CERTIFIED AND RETURNED. — The proceedings or documents which ought to be copied, certified, and returned to court, with the original recognizance of the party, are, the complaint, the warrant and return, the record, order or sentence of the justice upon the examination, the recognizances of the witnesses, and the bill of costs.

The same papers are to be furnished to appellants when requested, at their expense, except the recognizances and bill of costs, which are to be returned to court by the justice.

55. All the examinations and recognizances, taken by a magistrate under this chapter, shall be certified and returned to the

FORMS IN CRIMINAL PROCEEDINGS.

Defendant committed for non-payment of fine and costs.

FORM OF ENTRIES IN CASES NOT WITHIN THE JURISDICTION OF THE JUSTICE TO TRY AND PUNISH.

Defendant discharged.

Defendant ordered to recognize in the sum of \$—, with sureties for his appearance before S. J. Court.

Recognized with A. B., C. D. sureties.

Defendant failing to comply with above order, is committed to jail.

Each case or action on the docket should be numbered according to its order, and sufficient space left under each case to note all entries in its progress. All papers used in the case should be filed, numbered to correspond with that of the case, and be enclosed in a wrapper with a like number, and be put on the files of the justice in his office.

58. The following are the forms of the several parts of a criminal process before a trial justice, from the beginning to the end of the proceedings, and so arranged that by a small change of the several parts according to the facts in each given case, a record of the judicial proceedings of the justice can be made up. Such a record the statute requires the justice to keep, both in criminal and civil cases, and it must be precise and clear, containing proof within itself of every important fact on which the judgment rests, and it must all exist in writing, its allegations are received as the truth itself.

In this connection will be inserted forms of complaints, of the most common cases, that are brought before trial justices.

No. 1. COMPLAINT.

STATE OF MAINE.

O—, ss. To A. B. Esquire, one of the trial justices within and for said county :

C. D. of —, in the said county of O., in behalf of the State of Maine, on oath complains, that [on the first day of May, in the year of our Lord one thousand eight hundred and seventy-one, at — in said county of O., the following goods, to wit; one silver watch of the value of fifty dollars, of the goods and chattels of the said C. D., then and there in the possession of the said C. D. being found, were feloniously taken, stolen and carried away, against the peace of said State, and contrary to the form of the statute in such case made and provided; and the said C. D. hath probable cause to suspect and doth suspect that E. F. of —, in said county, laborer, on the said first day of May aforesaid, with force and arms, at said —, in said county of O., did feloniously steal, take and carry away the goods and chattels aforesaid.]

If the value of the goods stolen do not exceed ten dollars in value, instead of that between the brackets, insert as follows :

That E. F., of —, in said county, laborer, on the first day of May, in the year of our Lord one thousand eight hundred and seventy-one, with force and arms, at —, in said county of O., one silver watch of the value of five dollars, of the goods and chattels of him the said C. D., then and there in the possession of said C. D. being found, feloniously did steal, take and carry away, against the peace of said State, and contrary to the form of the statute in such cases made and provided.

Wherefore the said C. D. prays that the said E. F. may be apprehended, and held to answer to said complaint, and further dealt with relative to the same as law and justice may require.

Dated at —, in said county of O., this — day of May, in the year of our Lord one thousand eight hundred and seventy-one. C. D.

O —, ss, May —, 1871. Then the said C. D. personally appeared and made oath to the truth of the above complaint, before me,

A. B., Trial Justice.

A complaint will not be sustained, if in stating the time of the offence, it merely allege that it was committed "on or about" a specified day. *State v. Baker*, 34 Me., 52.

The form of the oath to the complaint will be varied when the complaint is made by an officer, in the performance of his duty, by adding "according to his knowledge and belief."

No. 2. WARRANT.

STATE OF MAINE.

O —, ss. To the sheriff of the county of O., or either of his deputies, and
[L. s.] to either of the constables of the town of E., in said county,
Greeting.

Forasmuch as the foregoing complaint hath this day been made upon oath to me the subscriber, one of the trial justices within and for the county of O.: These are therefore, in the name of the State of Maine, to require and command you forthwith to apprehend the body of E. F. therein mentioned, and bring him before me or some other of the trial justices within and for said county, that he may be examined concerning the subject matter of said complaint, and further dealt with as to law and justice shall appertain. And you are alike required to summon the complainant, and also G. H. and I. K. to appear and give evidence relative to the same when and where you have the said respondent. Hereof fail not at your peril. Given under my hand and seal at said —, this — day of — in the year of our Lord one thousand eight hundred and seventy —.

A. B., Trial Justice.

No. 3. WARRANT WHERE THE JUSTICE RETAINS THE COMPLAINT.

[L. s.] O —, ss. To the sheriff, &c. (as in No. 2.)

Whereas C. D., of —, in said county, on the — day of —, A. D. 187 in behalf of said State, on oath complained before me, one of the trial justices within and for said county, that [here set out the charge as in the complaint]

Therefore, in the name of said State, you are commanded to apprehend, forthwith, the said E. F., if he may be found in your precinct, and him bring

before me, A. B., one of the trial justices for said county, or some other trial justice within and for said county, to answer to the complaint aforesaid. You are also alike commanded to summon the complainant and G. H. and J. S., as witnesses to appear and give evidence touching the matter of said complaint, when and where you have the said E. F.

Given under my hand and seal at — aforesaid, this — day of —, in the year of our Lord 187—.

A. B., Trial Justice.

NO. 4. OFFICER'S RETURN ON WARRANT.

STATE OF MAINE.

O—, ss. On this — day of —, A. D. 187—, pursuant to the within warrant, I have apprehended E. F., therein named, and have him before A. B. Esquire, for the purpose therein mentioned. I have also summoned the complainant and A. L. to appear and give evidence, as within directed.

A. H., Deputy Sheriff.

FORM OF ARRAIGNMENT OF PRISONER.

The justice will call the prisoner by name, and require him to rise, and then say :

“Hearken to a complaint made against you on oath by C. D.”

After reading the complaint to the prisoner, the justice will address him thus :

“What say you to this complaint? Are you guilty or not guilty?”

NO. 5. WARRANT OF COMMITMENT FOR FURTHER EXAMINATION. See Ch. 74, § 17 ; also R. S., Ch. 133, § 10.

O., ss. To the sheriff of our county of O., or his deputy, and the keeper of [L. s.] the jail in said county, Greeting.

Whereas E. F. of —, laborer, is now brought before me, A. B., Esquire, one of the trial justices, &c. and charged on the oath of C. D. with the crime of [here insert the name of the crime.] These are, therefore, in the name of the State of Maine, to command you, the said sheriffs and constables, to convey the said E. F. to the said keeper of said jail. And you the said keeper, are hereby required to receive and safely keep the said E. F. in your said jail until Monday the — day of — next, when you are hereby required to bring him the said E. F. again before me to be re-examined and further dealt with according to law. And for so doing this shall be your sufficient warrant. Given under my hand and seal this — day of —, A. D., 187—.

A. B., Trial Justice.

NO. 6. ORDER TO BRING IN A PRISONER FOR EXAMINATION.

[L. s.] O., ss. To L. F. and the keeper of the State's jail in the said county of O., Greeting.

You are hereby required, forthwith, to bring E. F., a prisoner in the custody of said jailor, before me, the subscriber, one of the trial justices for the said county of O., at my dwelling house in —, in said county, (or at my office, &c.) for further examination.

A. B., Trial Justice.

No. 7. SUMMONS FOR WITNESSES.

O., ss. To the sheriff of our county of O., his deputies and the constables
[L. s.] of the town of H. in said county, Greeting.

In the name of the State of Maine, you are commanded to summon A. B., C. D., and E. F., all of H. aforesaid, to appear forthwith before me, the subscriber, one of the trial justices in and for the said county of O., at my dwelling house, [or, where the justice shall appoint the court to be held,] in said H., to give evidence on behalf of said State of what they know relative to a complaint this day made on oath before me the said justice, by C. D. of [addition] against one E. F. for feloniously stealing, taking and carrying away one watch, of the goods and chattels of him the said C. D. Hereof fail not, and make due return of this writ, with your doings thereon. Given under my hand and seal at said H. this — day of May, in the year of our Lord one thousand eight hundred and seventy-one.

A. B., Trial Justice.

No. 8. WARRANT TO BRING A WITNESS TO GIVE EVIDENCE WHO HAS REFUSED TO ATTEND ON A SUMMONS. R. S. Ch. 134, § 16.

[L. s.] O—, ss. To the sheriff, &c. (as in No. 2.) GREETING.

These are in the name of the State of Maine, to command you upon sight hereof, to take and bring before me, one of the trial justices, &c., the body of E. F. of whom you shall have notice, to answer to such matters and things as on behalf of the said State shall be, on oath, objected against him, by C. D., for that he, the said E. F., being a material witness to prove a certain felony lately committed, and having been duly summoned to give evidence touching the same, hath neglected and refused to appear in pursuance of said summons, against the peace, &c. Hereof fail not at your peril. Given, &c.

A. B., Trial Justice.

No. 9. COMMITMENT OF WITNESS FOR REFUSING TO GIVE EVIDENCE. Davis's Crim. Jus. 152.

[L. s.] O., ss. To the keeper of the State's jail in, &c., Greeting.

Receive into your custody the body of E. F. herewith sent you, brought before me, N. D., Esquire, one of the trial justices, &c. For that he, the said E. F., having knowledge that a certain robbery and felony was committed upon the person of A. B. on the — day of — last past, at said A., and touching which the said E. F. can give material evidence, hath refused to be examined on oath respecting the same. The said E. F. therefore, you are safely to keep in your said custody until he shall submit to be examined touching the said felony and robbery, or shall be discharged by due course of law; and for so doing this shall be your sufficient warrant. Given, &c.

N. D., Trial Justice.

No. 10. SUMMONS FOR PRISONER'S WITNESSES.

[L. s.] O., ss. To —, of —, Greeting.

E. F. of —, having been arrested and brought before me, by virtue of a warrant issued on a complaint made by C. D., of —, and having requested me to grant a summons for your attendance as a witness at his examination. You are hereby required in the name of the State of Maine, upon the payment of your legal fees, to appear before me, A. B., a trial justice, at my office in —, in the county of O., forthwith, to give evidence of what you know relating to said complaint. Hereof fail not, as you will answer your default under the pains and penalties by law made and provided.

Dated at — this — day of May. 18—.

A. B., Trial Justice.

No. 11. For forms of oath and affirmation of witnesses see Ch. 74, §§ 15, 16.

No. 12. RECORD OF CONVICTION.

STATE OF MAINE.

O., ss. Be it remembered that at a court held before me, A. B., one of the trial justices in and for said county of O—, at my dwelling house, to wit, at my office in —, in said county, on the — day of May, in the year of our Lord one thousand eight hundred and seventy-one, E. F., of —, in said county, laborer, was brought before me, by virtue of a warrant duly issued upon the complaint, in behalf of said State, on oath of C. D., of —, — in said county of O., yeoman, wherein the said C. D. complains that [here set out the complaint], which complaint being read, and heard by the said E. F., he was asked by me the said justice, whether he was guilty or not guilty of the offence charged upon him in the said complaint, who thereupon said that he was not guilty, but after hearing divers credible witnesses duly sworn to testify the whole truth relating to the premises, and fully hearing and understanding the defence of the said E. F., it appears to me the said justice, that the said E. F. is guilty of the offence aforesaid; it is therefore considered and ordered by me the said justice, that the said E. F., for the offence aforesaid, forfeit and pay the sum of — dollars to and for the use of this State, and costs of this prosecution, taxed at — dollars and — cents, and that he stand committed until this sentence be performed.

Attest:

A. B., Trial Justice.

[When the sentence is imprisonment and fine, the record will be]

It is therefore considered and ordered by me the said justice, that the said E. F. for the offence aforesaid be imprisoned in the jail of said county, at P., in the said county of O., for the term of thirty days, and forfeit and pay the sum of — dollars to and for the use of said State, and costs of this prosecution, taxed at — and — cents, and that he stand committed until this sentence be performed.

Attest:

A. B., Trial Justice.

[If there is an acquittal the record may be]

—is not guilty; it is therefore adjudged by me the said justice, that he be discharged and go thereof without day.

Attest:

A. B., Trial Justice.

[Or, if the prisoner pleads guilty, say]

—that he is guilty; and the said E. F. standing convicted of the said offence by his own confession, it is thereupon considered by me the said justice, having first inquired into the degree of the offence, that the said E. F. be imprisoned in the common jail in P. in said county for the term of fifteen days, and pay the costs of prosecution.

Attest:

A. B., Trial Justice.

No. 13. APPEAL. R. S. Ch. 132, § 15.

From which sentence the said E. F. appeals to the Supreme Judicial Court, next to be holden at P., in and for said county of O., on the — Tuesday of —, A. D. 187—, and recognizes in the sum of — dollars, with sufficient sureties, to appear at said court and prosecute his appeal.

Attest:

A. B., Trial Justice.

It is further ordered, that _____ and _____ recognize in the sum of _____ dollars for their appearance at court, to testify what they know relating to said complaint, and stand committed unless this order be performed.

A. B., Trial Justice.

STATE OF MAINE.

The condition of the above written recognizance is such, that whereas the said E. F. has been brought before me, one of the trial justices within and for the county of O., at my office in —, in said county of O., by virtue of a warrant duly issued upon the complaint, on oath of C. D., charging him the said E. F., as follows, viz: that E. F. of —, in said county, laborer, on the — day of —, in the year of our Lord one thousand eight hundred and seventy—, with force and arms, at —, in said county of O., one silver watch of the value of five dollars of the goods and chattels of him the said C. D., then and there in the possession of said C. D. being found, feloniously did steal, take and carry away against the peace of said State, and contrary to the form of the statute in such cases made and provided (set out the complaint in each case as in this form, commencing the same after viz.: thus, that E. F. of &c.) and the said E. F. having pleaded not guilty to the said complaint, but having been by me convicted of said offence, and sentenced to pay a fine of — dollars to and for the use of the State, and costs of prosecution, taxed at — dollars and — cents, (or whatever the sentence may be) the said E. F. appealed from said sentence to the next Supreme Judicial Court, to be holden at P., within and for said county of O., on the — Tuesday of —, A. D. 187—, and thereupon the said E. F. was ordered by me to recognize according to law. Now if the said E. F. shall personally appear at said term of court aforesaid, and prosecute his appeal, then this recognizance shall be void, otherwise shall remain in full force and virtue.

A. B., Trial Justice.

A. B., Trial Justice.

STATE OF MAINE.

These are in the name of the State of Maine, to command you the said sheriff, deputies, constables, and each of you, forthwith to convey and deliver into the custody of the keeper of our said jail, the body of E. F., of —, in our county of O., together with this precept, brought before me, one of the trial justices within and for said county of O., on the — day of

—, in the year of our Lord one thousand eight hundred and —, on the complaint of C. D., of —, who on his oath complains, that [setting forth the complaint] and hearing the testimony in support of said complaint, and the defence of the said E. F., it was considered and ordered by me, the said justice, that the said E. F. forfeit and pay [setting forth the conviction] from which decision the said E. F. claims an appeal to the Supreme Judicial Court, next to be holden at —, within and for the county of O., on the — Tuesday of — next; and the said — was ordered by me, the said justice, to recognize in the sum of — dollars, with sufficient sureties in the like sum, to appear at said court, and prosecute his appeal, with which said order the said E. F. fails and refuses to comply. And you, the keeper of the said jail, in the name of the State aforesaid, are hereby required to receive the said E. F. into your custody in said jail, and him there safely to keep until he shall so recognize with sureties as aforesaid, or be otherwise discharged in due course of law. Hereof fail not at your peril.

Given under my hand and seal this — day of —, in the year of our Lord one thousand eight hundred and —.

A. B., Trial Justice.

No. 16. MITTIMUS FOR NOT PAYING FINE AND COSTS.

STATE OF MAINE.

O —, ss. To the sheriff of the county of O., his deputies, the constables
[L. s.] of the town of H., in said county, and to the keeper of the
jail in said county, Greeting.

Whereas E. F. of —, &c. hath this day, at —, in said county, been convicted before me, A. B. Esquire, one of the trial justices in and for said county of O., of feloniously stealing a watch of the value of five dollars for which offence the said E. F. hath been sentenced by me, the said justice, to pay a fine to the use of the State, of — dollars and costs of prosecution, taxed at — dollars and — cents, and to stand committed until this sentence be performed; all which sentence the said E. F. now before me, the said justice refuses to comply with and perform.

These are therefore, in the name of the State of Maine, to require you the said sheriff, deputies, and constables, forthwith to take the said E. F. and him convey to the common jail in P. in said county, and deliver him to the keeper thereof, together with this precept. And you, the said keeper, are hereby, in like manner, commanded to receive the said E. F. into your custody in said jail, and him there safely to keep until he shall perform said sentence, or be otherwise discharged by course of law. Given under my hand and seal this — day of —, in the year of our Lord —.

A. B., Trial Justice.

[Where the sentence is imprisonment, recite the sentence, and conclude as follows:]

For which offence the said E. F. is sentenced by me, the said justice, to be punished by imprisonment in the common jail, situated in P., in the county aforesaid, from and after this — day of —, in the year aforesaid, for and during the term of — days, and to pay the costs of prosecution taxed at — dollars and — cents. And you, the keeper of said jail, are hereby commanded in the name of the State, to receive the said E. F. into your custody in said jail, and him there safely to keep until the expiration of said — days, or he be otherwise discharged by due course of law.

Given under my hand and seal this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

A. B., Trial Justice.

No. 17. In a mittimus, it is not necessary to copy the complaint, or state the proof before the justice. Ricker, Pet'r, 32 Me. 37.

No. 18. RECOGNIZANCES OF WITNESSES.

STATE OF MAINE.

O., ss. Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and seventy—, at a court holden before me, a trial justice in and for said county, at my office in —, in said county, G. H. and J. K., both of, &c., as principals, and R. S. and M. N. as sureties, all of —, in said county, personally appeared before me, and acknowledged themselves to be jointly and severally indebted to the State of Maine in the sum of — dollars, to be levied on their goods or chattels, lands or tenements, and in want thereof upon their bodies, to the use of the said State, if default be made in the performance of the condition hereunder written.

The condition of the above written recognizance is such, that if G. H. and J. K. shall personally appear before the justice of the Supreme Judicial Court to be holden at —, within the said county of O., on the — day of — next; then and there to testify on behalf of said State upon the complaint of one C. D., made upon oath before me, the said justice, against one E. F., wherein C. D. charges said E. F. with feloniously stealing, &c. their testimony having been deemed by me to be material, then the above written recognizance to be void and of none effect; otherwise to abide in full force and virtue.

A. B., Trial Justice.

No. 19. COMMITMENT OF WITNESSES FOR NOT RECOGNIZING.

STATE OF MAINE.

O., ss. To the sheriff of the said county of O., or his deputy, or any constable of the town of —, in said county, and the keeper of the jail in our said county, Greeting.

Whereas E. F. of — is this day brought before me, one of the trial justices within and for said county, at my office in —, in said county, by virtue of a warrant issued against him, on the complaint of C. D., who therein, upon oath, charges E. F. with the crime of larceny, on which said complaint the said E. F. has been ordered to recognize for his appearance at the Supreme Judicial Court, to be holden, &c.; and whereas it appears to me, that the testimony of G. H. and J. K., &c. is material against the said E. F., and the said G. H. and J. K. have been ordered by me to recognize for their appearance at said term of court to testify on behalf of said State upon said complaint, and have refused so to do:

You are, therefore, hereby required to take the said G. H. and J. K., and them deliver into the custody of the keeper of our said jail in P., in said O., together with this warrant. And the said keeper is alike required to receive the said G. H. and J. K. into his custody, in said jail, and them there safely keep until they comply with said order, or be otherwise discharged by due course of law.

Given under my hand and seal at — aforesaid, this — day of —, in the year of our Lord one thousand eight hundred and —.

A. B., Trial Justice.

No. 20. RECORD OF EXAMINATION AND ORDER TO RECOGNIZE.

STATE OF MAINE.

O., ss. Be it remembered, that at a court held before me, A. B. Esquire, one of the trial justices in and for the said county of O., at my office in — in said county, on the — day of —, in the year of our Lord one thousand

eight hundred and seventy —, E. F. of —, in the said county of O., laborer, was brought before me by virtue of a warrant, duly issued upon the complaint of C. D. of —, wherein the said C. D. complains [here insert the complaint], which complaint being read, and heard by the said E. F., he, the said E. F., was asked by me, the said justice, whether he was guilty or not guilty of the offence charged upon him in manner and form aforesaid, who then and there said he was not guilty; but after hearing divers credible witnesses, duly sworn to testify the whole truth relating to the premises, and it thereupon appearing that an offence had been committed as charged in the aforesaid complaint, and that there was probable cause to charge the said E. F. guilty of the offence charged upon him in said complaint, and said offence being bailable, it is therefore considered and ordered by me, the said justice, that the said E. F. recognize to the State in the sum of — dollars, with sureties in the like sum, for his appearance at the Supreme Judicial Court, next to be holden at —, in said county of O., on the — Tuesday of —, in the year of our Lord one thousand eight hundred and seventy —, to answer to the offence charged in said complaint, and the said E. F. offers sufficient bail, which is taken by me the said justice, and the said E. F. is discharged upon his said recognizance. (If no bail is offered, say, after "seventy —," the said E. F. not offering sufficient bail is committed to prison to await a trial. (If the offence is not bailable say, after the word "complaint,") and the offence not being bailable, the said E. F. is committed to prison to await a trial.

Attest:

A, B., Trial Justice.

No. 21. RECOGNIZANCE FOR FUTURE APPEARANCE.

[The penal part of this recognizance same as No. 14, on appeal.]

The condition of this recognizance is such that, whereas the said E. F. is this day brought before me, A. B., a trial justice, &c., by virtue of a warrant, duly issued on the complaint of C. D., &c., who on oath complains that &c., [setting forth the complaint] and it appears to me that there is reasonable cause to believe that said complaint is true, and the said E. F. has been ordered to recognize for his appearance before me on the, &c., at my office in —.

Now if the said E. F. shall personally appear at said office on the said — day of — to answer said complaint, and abide the order of court thereon, then this recognizance shall be void; otherwise shall remain in full force and virtue.

Attest,

A, B., Trial Justice.

No. 22. MITTIMUS FOR NOT SO RECOGNIZING.

STATE OF MAINE.

O——, ss. To the sheriff of the said county of O——, or his deputy, or any constable of the town of —, in said county, and the keeper of the jail in our said county,

GREETING.

[L. s.]

Whereas, E. F., of &c., has been this day brought before me, A. B., one of the trial justices in and for said county, by virtue of a warrant issued against him on the complaint, on oath, of C. D., of —, charging him, the said E. F., with having committed the crime [here insert the name of the crime,] and it appears to me that there is reasonable cause to believe that said complaint is true, and the said E. F. has been ordered to recognize with sureties for his appearance before me, at my office in —, on &c., and has not so recognized, but fails and refuses to comply with said order.

You, the said sheriffs and constables, are, therefore, hereby required, in the name of the State of Maine, to take the said E. F., and him carry to the said jail, and deliver to the keeper thereof, together with this warrant. And the

said keeper is alike required to receive the said E. F. into his custody, in said jail, and him safely keep till the said day of his appearance aforesaid, unless he shall before then recognize as aforesaid, or until he be otherwise discharged by due course of law.

Given under my hand and seal at —, this — day of —, in the year of our Lord one thousand eight hundred and seventy—.

A. B., Trial Justice.

No. 23. RECOGNIZANCE FOR APPEARANCE AT THE SUPREME JUDICIAL COURT.

[The penal part of this recognizance, same as No. 14, on appeal.]

The condition of this recognizance is such that, whereas, the said E. F. has been brought before me, one of the trial justices within and for the county of O—, at my office in —, in said county of O—, by virtue of a warrant duly issued upon the complaint, on oath of C. D., of —, charging him, the said E. F., as follows, viz.:—That E. F., of —, in said county, laborer, on &c., [here set forth the complaint] which complaint being read, and heard by the said E. F., he, the said E. F., was asked by me, the said justice, whether he was guilty or not guilty of the offence charged upon him in manner and form aforesaid, who then and there said he was not guilty; but after hearing divers credible witnesses, duly sworn to testify the whole truth relating to the premises, and upon an examination of the facts relating to said charge, and if thereupon appearing that an offence had been committed as charged in said complaint, and that there was probable cause to charge the said E. F. guilty of the offence charged upon him in said complaint, and said offence being bailable, it was ordered by me, the said justice, that the said E. F. recognize to the State in the sum of — dollars, with sufficient bail, for his personal appearance at the Supreme Judicial Court, next to be holden at —, in said county of O—, on the — Tuesday of —, in the year of our Lord one thousand eight hundred and seventy—, to answer to the offence charged in said complaint. Now if the said E. F. shall make his personal appearance at the court aforesaid, then and there answer to said charge, then this recognizance shall be void; otherwise shall remain in full force and virtue.

A. B., Trial Justice.

No. 24. FORM OF MITTIMUS FOR NOT RECOGNIZING.

STATE OF MAINE.

O., ss. To the sheriff of the county of O., his deputies, or the constables of [L. s.] the town of —, and to the keeper of the jail in our said county, Greeting.

Whereas E. F., of the town of —, in our county of O., has been this day brought before me, A. B. one of the trial justices in and for the county of O., by virtue of a warrant issued against him, on the complaint of C. D., of —, in said county, who therein on his oath complains and charges said E. F. with having committed the crime of larceny in said county, and it appears to me upon the testimony of the said C. D. and divers other persons, duly sworn to give testimony touching said charge, that an offence has been committed as charged in said complaint, and that there is probable cause to charge the said E. F. guilty of the offence charged upon him in said complaint, for which offence it has been ordered by me, the said justice, that said E. F. recognize with sufficient bail in the sum of — dollars, for his personal appearance before the Supreme Judicial Court, to be holden at P., within and for the county of O., on the — day of —, to answer further to said charge, and the said E. F. hath not so recognized, but fails so to do.

These are therefore in the name of the State of Maine, to command you, the said sheriff, deputies and constables, and each of you, forthwith, to con-

vey the said E. F. to the common jail at P., in the county aforesaid, and deliver him to the keeper thereof, together with this precept, and you the keeper of said jail at P. aforesaid, are hereby in like manner commanded in the name of the State aforesaid, to receive the said E. F. into your custody in jail, and him there safely to keep until he shall comply with said order or be otherwise discharged by due course of law.

Given under my hand and seal this — day of —, in the year of our Lord one thousand eight hundred and seventy —,

A. B., Trial Justice.

No. 25. FORM OF RETURN OF COMMITMENT.

O., ss., —, 18—. By virtue of the within precept, I have committed the body of the within named E. F. to the common jail in P., in said county.

B. M., Deputy Sheriff.

No. 26. COMMITMENT WHEN THE OFFENCE IS NOT BAILABLE.

STATE OF MAINE.

[L. s.] O., ss. To the sheriff, &c. (same as in No. 24.)

Whereas E. F. of —, in our county of O., has this day been brought before me, A. B., one of the trial justices in and for the county of O., at my office in —, in said county, by virtue of a warrant issued against him, on the complaint of C. D., of —, in said county, who therein on his oath complains and charges said E. F. with having committed the crime of larceny in said county, and it appears to me upon the testimony of the said C. D., and other persons, duly sworn to give testimony touching said charge, that an offence has been committed as charged in said complaint, and that there is probable cause to charge the said E. F. guilty of the offence charged upon him in said complaint, for which offence it has been ordered by me, the said justice, the offence not being bailable, that said E. F. be committed to our common jail in P., in said county, and there detained until discharged by due course of law.

These are therefore in the name of the State of Maine to command you, the said sheriff, deputies and constables, and each of you, forthwith, to convey the said E. F. to the said jail, and deliver him to the keeper thereof, together with this precept, and you the keeper of said jail, are hereby, in like manner, commanded in the name of said State, to receive the said E. F. into your custody in jail, and him there safely to keep until he shall be discharged by due course of law.

Given under my hand and seal this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

A. B., Trial Justice.

No. 27. MITTIMUS TO STATE REFORM SCHOOL.

STATE OF MAINE.

O., ss. To the sheriff of said county of O., or either of his deputies, or either of the constables of the city of —, or either of the towns within said county, and to the keeper of the State's jail, house of correction, or State Reform School, in the county of Cumberland, Greeting.

Whereas J. C., of the town of —, in our county of O., now stands convicted before me, A. B., one of the trial justices of the peace in and for the county of O., upon the complaint of J. B., of, &c., in behalf of said State, on oath, of the crime of larceny of property not exceeding in value one dollar, in said county of O., and said J. C. being a youth between the ages of eight and sixteen years. After a full hearing thereon by me the said justice, I convicted the said J. C. of the crime therein charged, and sentenced

him to the State Reform School, situate at Cape Elizabeth, in said county of Cumberland, there to be kept, disciplined, employed and governed under the direction of the board of trustees of said school during his minority; Provided, however, that if the said J. C. shall not be received or kept in said State Reform School for the aforesaid term, then the said J. C. shall be punished by imprisonment in the — for said county of —, for the term of —. And I hereby certify that the said J. C., at the time of his commitment, resided in the town of —, (or city of —, as the case may be).

Therefore, in the name of said State, you are commanded to convey said J. C. to said State Reform School, or —, and him there deliver to the keeper thereof, with this warrant. And said keeper is alike commanded to receive the said J. C. into his custody, in said State Reform School, or said —, and him there keep until he perform said sentence, or be otherwise discharged by due course of law.

Given under my hand and seal, the — day of —, in the year of our Lord one thousand eight hundred and seventy —.

A. B., Trial Justice.

NO. 28. COMMON FORM OF THE MITTIMUS FOR COMMITMENT TO THE HOUSE OF CORRECTION.

STATE OF MAINE.

O—, ss. To the sherff of our county of O—, his deputies, the constable of the town of —, and the keeper of the house of correction at [L. s.] —, in said county, Greeting.

We command you, the said sheriff, deputies, constables, and each of you, forthwith to convey and deliver into the custody of the master of said house of correction, the body of E. F. of —, in our county of O—, who stands convicted before me, A. B., Esquire, one of the trial justices within and for the county of O—, on the complaint of C. D., who on his oath complains that [setting forth the complaint].

For which offence the said E. F. is sentenced by me, said justice, to be committed to the house of correction, situated in said —: there to be put to hard labor, according to the rules of the same, for the term of —, from and after this — day of —; and make return on this precept of your doings thereon.

And you, the said keeper, in the name of the State aforesaid, are hereby commanded to receive the said E. F. into your custody in our said house of correction, and him therein safely to hold, employ and keep at work until the expiration of said —, or he be otherwise discharged in due course of law. Hereof fail not at your peril.

Given under my hand and seal, this — day of —, in the year of our Lord one thousand eight hundred and —.

A. B., Trial Justice.

NO. 29. COMMITMENT TO THE HOUSE OF CORRECTION FOR FAILING TO COMPLY WITH AN ORDER OF COURT.

STATE OF MAINE.

O—, ss. To the sheriff of our county of O—, his deputies, the constables of the town of —, and the keeper of the house of correction at [L. s.] —, in said county, Greeting.

These are, in the name of the State of Maine, to command you, the said sheriff, deputies, constables, and each of you, forthwith to convey and deliver into the custody of the keeper of our house of correction at —, in said county, the body of E. F., of —, in our county of O—, brought before me, one of the trial justices within and for said county of O—, on the — day of —, in the year of our Lord one thousand eight hundred and

—, on the complaint of —, of —, who on his oath complains that [setting forth the complaint] against the peace of the State, and contrary to the form of the statute in such cases made and provided; and after due examination, the said defendant was ordered by me, the said justice, &c., and in default of so doing that the said defendant stand committed to the house of correction at —, aforesaid, until he comply with said order, or be otherwise discharged according to law. With which said order the said defendant fails and refuses to comply.

And you, the keeper of the house of correction at —, in said county, in the name of the State aforesaid, are hereby commanded to receive the said defendant into your custody in our said house of correction, and him there safely to keep until he shall comply with said order, or be otherwise discharged in due course of law. Hereof fail not at your peril.

Given under my hand and seal, at — aforesaid, this — day of — in the year of our Lord one thousand eight hundred and —.

A. B., Trial Justice.

NO. 30. COMMITMENT FOR NOT FINDING SURETIES FOR KEEPING THE PEACE. R. S. Ch. 130, § 4.

O—, ss. To the sheriff of our county of O—, his deputies, the constables of [L. s.] the town of —, and the keeper of the house of correction at —, in our said county, Greeting.

Whereas E. F., of —, in the county of O—, by virtue of a warrant issued by me, A. B., one of the trial justices within and for the county of O—, on the complaint of —, who on his oath complains that [setting forth the complaint] upon which complaint the said defendant has this day been brought before me, the said justice; and after a hearing in the premises I have ordered him, the said E. F., to find sufficient sureties to be bound with him in a recognizance to keep the peace, in the sum of — dollars, and be of good behavior towards all persons within said State, and especially towards the said —, for the term of —, from and after this — day of —, and to pay the costs of prosecution, taxed at — dollars and — cents. And whereas he, the said —, hath failed and refused, and doth now, before me, said justice, fail and refuse to recognize himself as aforesaid, and to find such sureties, to wit, in the sum of — dollars, and to pay said costs of prosecution as now required by me, the said justice.

These are therefore, in the name of the State of Maine, to command you, the said sheriff, deputies, and constables, and each of you, forthwith to convey the said E. F. to the jail at P—, in our county aforesaid, and to deliver him to the keeper thereof; and make return on this precept of your doings therein. And you, the said keeper, in the name of the State aforesaid, are hereby commanded to receive the said E. F. into your custody in our jail, and him there safely to keep according to law, until he shall find such sureties as aforesaid, and pay said costs, or be otherwise discharged in due course of law.

Given under my hand and seal at —, this — day of —, in the year, &c. A. B., Trial Justice.

NO. 31. COMMITMENT BY A JUSTICE, ON VIEW, FOR INSULTING HIM IN THE EXECUTION OF HIS OFFICE.

STATE OF MAINE.

[L. s.] O—, ss. To the keeper of the jail in —, &c. Greeting.

Receive into your custody the body of E. F., herewith sent you by me, A. B., a trial justice, &c., and charged by me, the said justice, upon view of me, the said A. B., Esquire, one of the trial justices, &c., for indecent behavior,

by insulting me, and obstructing me in the due and lawful execution of my office as a magistrate aforesaid, against the peace of said State. Him, the said E. F., therefore safely keep in your custody for want of sureties, or until he shall be discharged by due course of law; and for so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord one thousand, &c.

A. B., Trial Justice.

No. 32. COMPLAINT FOR AN OFFENCE COMMITTED IN ANOTHER STATE, AND FOR WHICH THE PARTY IS LIABLE TO BE DELIVERED TO THE EXECUTIVE OF THAT STATE. R. S. Ch. 138, §§ 6 to 10.

STATE OF MAINE.

O—, ss. To A. B., Esquire, one of the trial justices in and for the county of O—; C. D. of, &c. in said county, on oath, complains that heretofore, to wit, on, &c., at the city of New York, within the State of New York, &c., [setting forth the offence in technical language] and the said C. D. hath probable cause to suspect, and doth suspect that E. F. of, &c., did, &c.; and the said C. D. further shows that the said E. F. is now found within this State, to wit, at —, in said county of O—, and is liable, by the constitution and laws of the United States, to be delivered over upon the demand of the executive of the said State of New York.

Wherefore the said C. D. prays that he the said E. F. may be apprehended, and held to answer to this complaint, and further dealt with, relative to the same, according to law.

C. D.

O—, ss. Received and sworn to, on the — day of —, A. D. 18—. Before me, A. B., Trial Justice.

No. 38. WARRANT ON THE ABOVE COMPLAINT.

STATE OF MAINE.

O—, ss. To the sheriff of said county, or his deputy, or to either of the [L. s.] constables of the town of —, in said county, Greeting.

You are hereby required, in the name of the State of Maine, forthwith to apprehend E. F., (if he may be found in your precinct) and him bring before me, A. B., Esquire, one of the trial justices within and for said county, or some other trial justice in and for said county, to answer to the complaint of C. D. of, &c., who on oath complains, &c., and to be further dealt with according to law. You are also required to summon the complainant, and G. H. and J. S. as witnesses, to appear and give evidence touching the matter contained in the above complaint, when and where you have the said E. F. Given, &c..

No. 34. RECOGNIZANCE FOR FUTURE APPEARANCE OF SUCH PERSON.

[The penal part of the recognizance is the same as in No. 14. The condition is as follows:]

The condition of this recognizance is such that, whereas the said E. F. is this day brought before me, A. B., a trial justice, &c., by virtue of a warrant duly issued on the complaint of C. D. of, &c., who on oath complains that, &c. [setting forth the complaint] and it appears to me that there is reasonable cause to believe that said complaint is true, and the said E. F. has been ordered to recognize for his appearance before me on the, &c., at my office in —.

Now if the said E. F. shall personally appear at said office on the said — day of — to answer said complaint, and abide the order of court thereon, then this recognizance shall be void; otherwise shall remain in full force and virtue.

Attest :

A. B., Trial Justice.

No. 35. MITTIMUS FOR NOT SO RECOGNIZING.

STATE OF MAINE.

O—, ss. To the sheriff of the said county of O—, or his deputy, or any [L. s.] constable of the town of —, in said county, and the keeper of the jail in our said county, Greeting.

Whereas E. F., of, &c. has been this day brought before me, A. B., one of the trial justices within and for said county, by virtue of a warrant issued against him, on the complaint of C. D., who therein, upon oath, says that [setting forth the complaint,] and it appears to me that there is reasonable cause to believe that said complaint is true, and the said E. F. has been ordered to recognize with sureties for his appearance before me, at my office in —, on, &c. and has not so recognized, but fails and refuses to comply with said order.

You, the said sheriffs and constables, are, therefore, hereby required in the name of the State of Maine, to take the said E. F., and him carry to the said jail, and deliver to the keeper thereof, together with this warrant. And the said keeper is alike required to receive the said E. F. into his custody, in said jail, and him safely keep till the said day, unless he shall before then recognize as aforesaid, or until he be otherwise discharged by due course of law.

Given under my hand and seal at —, this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

A. B., Trial Justice.

No. 36. RECOGNIZANCE OF A PARTY REMANDED TO JAIL AFTER A PETITION FOR A WRIT OF HABEAS CORPUS.

[The penal part of the recognizance the same as in No. 14. The condition is as follows:]

The condition of this recognizance is such, that whereas [setting forth the complaint and the commitment after some one of the foregoing forms, according to the facts,] and whereas, afterwards, to wit, —, on the complaint of —, a writ of habeas corpus was duly issued by the Hon. E. S. one of the justices of the Supreme Judicial Court, and such further proceedings had thereon, that the said E. F. was afterwards, to wit, &c., remanded to prison, with an order of said justice that if the said E. F. should recognize in the sum of — dollars for his appearance at the Supreme Judicial Court next to be holden, &c., then he should be admitted to bail.

Now if the said E. F. shall personally appear at the said term of court then and there to answer to said charge, and shall abide the order of said court, &c. [as in No. 13,] then this recognizance shall be void; otherwise shall remain in full force and virtue.

Attest :

A. B., Trial Justice.

No. 37. RECOGNIZANCE TO BE TAKEN BEFORE TWO JUSTICES OF THE PEACE.

[The penal part of the recognizance as in No. 14.]

The condition of this recognizance is such that, whereas the said E. F. [reciting the fact, cause, and mode of the commitment in the manner expressed in the foregoing forms] and the said E. F. has made application to us

A. B. and C. D., each a justice of the peace and of the quorum in and for said county of O—, to be admitted to bail, and we have inquired into the case. Now, if the said E. F. shall, &c. [making the condition to conform to the provisions of the statute, according to the nature of the offence and the cause of commitment,] then this recognizance shall be void; otherwise shall remain in full force and virtue.

L. M. } Justices of the peace and
N. G. } of the quorum.

No. 38. EXAMINATION OF THE COMPLAINANT.

O—, ss, to wit. The information of C. D., of —, in the said county, taken upon oath before me, A. B., Esquire, one of the trial justices, &c., on the — day of —, in the year, &c., in the presence and hearing of E. F., charged before me by C. D., of —, [state the offence as contained in the information or complaint,] which said C. D., on his oath aforesaid, before me, the said justice, in the presence and hearing of the said E. F., saith that [here state the evidence fully.]

Taken before me, the day and year above mentioned.

A. B., Trial Justice.

No. 39. EXAMINATION AND CONFESSION OF THE PRISONER.

O—, ss. The examination of E. F. of —, yeoman, taken before me, one of the trial justices, &c., on the — day of —, the said E. F. being charged before me by C. D. of — with the [here state briefly the charge.] He, the said E. F. upon his examination now taken before me, voluntarily confesseth and saith, that [here state the substance of the confession.]

E. F. [Prisoner's signature.]

Taken before me the day and year above mentioned.

A. B. Trial Justice.

No. 40. DISCHARGE OF RECOGNIZANCE. R. S. Ch. 133, §§ 18, 19.

Be it remembered, that on this — day of —, in the year of our Lord one thousand eight hundred and —, before me, the subscriber, one of the trial justices within and for the county of O., appears E. F., the party injured by a certain assault and battery, of which C. D. stands charged, and has entered into recognizance before me, with G. H. and I. J. as sureties, for his appearance at the Supreme Judicial Court, next to be holden at —, in and for said county, on, &c., to answer to said charge and abide the order of court thereon; and said E. F., the party injured as aforesaid, acknowledges in writing that he has received satisfaction for said injury; and all costs having been duly paid, it is ordered by me, the said justice, that the above named recognizance of C. D. as principal with G. H. and I. J. as sureties, be discharged, and also the recognizances of W. S. and R. P. for their appearance at said court to give evidence in behalf of the State upon the aforesaid charge against the said C. D.

N. D., Trial Justice.

No. 41. ORDER TO SUPERSEDE COMMITMENT.

[L. s.] O—, ss. To the keeper of the jail in the said county of O—,

Greeting.

Whereas C. D. has been committed to your custody by my order, dated on the — day of —, to await his trial in the Supreme Judicial Court, next to be held at A., within and for the county of O., on, &c., on a charge of assault and battery, made by complaint on oath before me, and whereas E. F., the party injured by said assault and battery, has this day appeared

before me and acknowledged in writing that he has received satisfaction for said injury; all the costs of prosecution having been paid :—This is therefore in the name of the State of Maine, and in pursuance of the provisions of the statute in such case made and provided, to supersede the commitment of said C. D., and you are hereby required forthwith to discharge him from your custody. Given, &c.

N. D., Trial Justice.

The plea of a former conviction for the same identical crime is a good plea in bar. This depends upon the principle, that no man ought to be twice brought in danger for the same offence. 4 Bl. Com., pp. 335 and 336.

No. 42. FORM OF PLEA OF FORMER ACQUITTAL OR CONVICTION.

O—, ss. Before M. W., trial justice at N—, in said county, —, 18—.

State (A. B., complainant) vs. J. B.

And the said J. B., in his own proper person, comes into court here, and, having heard said complaint read, says that said complaint ought not to be farther prosecuted against him, the said J. B., because he says that heretofore, to wit, [here copy the record of acquittal, or conviction, in the past tense, omitting the word “me” where it occurs, then say] as by the record thereof remaining appears; which judgment is in full force, and not reversed or annulled. And the said J. B. says that he, the said J. B., and the said J. B. so convicted (or acquitted) are one and the same person, and not other and different persons, and the said offence of which he, the said J. B. was so convicted (or acquitted), and the offence set forth in this complaint, are one and the same, and not other and different. And this he, the said J. B. is ready to verify. Wherefore he prays judgment, and that he may be discharged.

No. 43. REPLICATION.

And the said complainant, who prosecutes for said State in this behalf, says that said State ought not to be precluded from prosecuting said complaint because he says that there is not any record of said conviction (or acquittal), as the said J. B. has in his plea alleged. And this he prays may be inquired of by said justice.

And the said J. B. doth the like.

APPEAL PAPERS IN CRIMINAL CASES.

In making up appeal papers the justice should copy the whole process, and all writings filed, in the following order, viz. :

1, Complaint; 2, Warrant; 3, Officer's return; 4, Record of conviction; 5, Bill of costs; 6, All writings filed in the case; each of which should be certified as follows.

A true copy of record.

Attest :

A. B., Trial Justice.

The above papers, excepting the bill of costs, are to be delivered to the appellant when called for by him, on payment of fees for copies.

The justice should make up the recognizances of the prisoner and witnesses (which are original papers), and certify them as follows :

Attest :

A. B., Trial Justice.

The recognizances in criminal cases, with the bill of costs, should be, soon after trial or examination, forwarded by the justice to the county attorney or clerk of courts. This duty the justice should not neglect. See R. S. Ch. 133, § 7.

In examination of crimes not within the jurisdiction of trial justices, the copy of papers that should be forwarded to the county attorney or clerk of the courts, in addition to the recognizances of the party and witnesses and bill of costs, are the Complaint, Warrant, Officer's Return, Record of Examination, and a copy of the Examination, if taken in writing, certified as in cases of appeal.

CHAPTER LXXVI.

JURISDICTION OF TRIAL JUSTICES IN CIVIL CASES.

Every trial justice may hold a court in his county, as provided in this chapter, and have original and exclusive jurisdiction of all civil actions, including prosecutions for penalties in which his town is interested, when the debt or damages demanded do not exceed twenty dollars, except those in which the title to real estate, according to the pleadings or brief statement filed in the case by either party, is in question ; and except that in those towns in which a municipal or police court is established, his jurisdiction shall be restricted to those cases in which jurisdiction has been heretofore given to justices of the peace, in the act establishing such court, and to cases where jurisdiction has been or may be given to trial justices in like manner. R. S. Ch. 83, § 3.

PROCEEDINGS ON PLEA OF TITLE TO REAL ESTATE.

When it appears by the pleadings or brief statement in the case, that the title to real estate is in question, it shall be removed on the request of either party, to the supreme judicial court ; and such party shall recognize to the other party in a reasonable sum with sufficient sureties, to enter the case at the next term of said court ; and if he does not so recognize, the justice shall hear and decide the case, as if such request had not been made. Ib. § 4.

The party so recognizing shall produce at said court a copy of the record, and all such papers as are required to be produced by an appellant ; and if he fails so to do, or to enter the action as before provided, he shall, on the complaint of the adverse party, be nonsuited or defaulted, as the case may be ; and such judgment shall be rendered as law and justice require. Ib. § 5.

FORM OF WRITS.

The writ [in civil actions commenced before a trial justice, shall be a summons, a *capias* and attachment, or *scire facias*, of the form prescribed by law, sealed and signed by the justice, and duly served, not less than seven, nor more than sixty days before the return day thereof. Ib. § 6 ; R. S. Ch. 81, § 3.

ACTIONS, HOW AND WHERE BROUGHT.

All actions between parties residing in the same county, returnable before any trial justice, shall be commenced before some such disinterested justice residing or holding his court in the town where one of the parties, or his attorney, or person summoned as trustee in such action resides ; and if there is no such justice residing or holding his court therein, then before some such justice, if any, in an adjoining town, otherwise before any such justice in the county. R. S. Ch. 83, § 7.

When the parties reside in different counties, such actions shall be commenced before any disinterested trial justice residing in the county where any defendant resides ; but all trustee actions, returnable before such justice, shall be commenced within the county where some trustee therein named resides. Ib. § 8.

WRITS, WHEN AND WHERE RETURNABLE.

Original writs, issued by any trial justice, may be made returnable before any other trial justice of the same county, and shall have the same effect as if signed by the latter justice. *Ib.* § 9.

No writ shall be made returnable before any trial justice, at an earlier hour than nine o'clock in the forenoon, nor later than four in the afternoon. No judgment of such justice shall be valid unless he shall be present with the plaintiff's writ at the place, and within one hour after the time therein named, unless the case is continued by some other justice, as provided in section twelve. *Ib.* § 10.

SERVICE OF WRITS.

When goods or estate are attached on either of said writs, except in trustee wills, a separate summons, in form by law prescribed, shall be delivered to the defendant, or left at his dwelling house or place of last and usual abode, fourteen days before the sitting of the court, to which it is returnable, which shall be a sufficient service. R. S. Ch. 81, § 16. (In justice actions, seven days before the sitting of the court, to which it is returnable, which shall be a sufficient service.)

Where the process is by original summons, wherein the law does not require a separate summons to be left with the defendant, the service shall be sufficient by reading the writ or original summons to the defendant, or by giving him in hand, or leaving at his dwelling house or place of last and usual abode, a certified copy thereof, fourteen days before it is returnable. *Ib.* § 17. (In justice actions seven days before it is returnable.)

HOW WANT OR DEFECT OF SERVICE MAY BE CURED.

When the property of a defendant is attached on a writ, and no service is made on him before entry, or if service in any case is defective for any cause, without the fault of the plaintiff or his attorney, the court may order a new service, which, when made, shall be as effectual as if proper service had been made in the first instance. *Ib.* § 21.

UNKNOWN DEFENDANT, HOW SUED.

When the name of the defendant is not known to the plaintiff, the writ may issue against him by an assumed name ; and if duly served, it shall not be abated for that cause, but may be amended on such terms as the court orders. Ib. § 5.

OF THE RETURN ON WRITS.

It is the duty of the officer, serving any precept, to make seasonable return of the same, with his doings thereon, to the magistrate where it is made returnable. He must certify upon the back a particular statement of the manner in which he made the service, and it is not sufficient that he return generally that he made the service according to law, but he must state the manner in which it was done, that the parties may be informed of their rights, and that the court may judge of the officer's proceedings. And unless such return be made, the case is not properly before the magistrate, and he can exercise no jurisdiction over it ; though in many cases of irregularity in service of writs, a general appearance and especially a plea to the action, is a waiver of any exception to the jurisdiction. 2 Pick. 535.

The return is conclusive evidence of the fact stated in it, and the magistrate cannot admit evidence *aliunde* to contradict or control it. 11 Wend. 51.

After the writ is served, no alteration should be made in it, either by the officer who serves it, or by the attorney. 9 N. H. 257.

And such an alteration makes the writ abateable. 23 Me. 74.

HOW SERVED ON DEFENDANT OUT OF STATE.

When the goods of any person, not being an inhabitant of the State, and having no agent nor attorney within the same, have been attached in any action before a trial justice, the justice may order such notice to the defendant as justice may require, and such order having been complied with, the defendant shall be held to answer to such suit, as in cases where service is made in the usual form. And such order may be before, as well as after entry of the action. If before entry, the justice must make the

order on the back of the process and sign it. R. S. Ch. 81, § 19.

No person shall serve or execute any civil process on the Lord's day ; but such service shall be void, and the person executing such process shall be liable in damages to the party aggrieved, as if he had no process. Ib. § 78.

In actions against counties, towns, parishes, religious societies, and all other corporations, the writ must be served thirty days before the sitting of the court to which the same is made returnable. Ib. § 18.

JUDGMENT ON NONSUIT OR DEFAULT.

The justice may enter judgment on nonsuit or default against the party failing to appear, at the expiration of one hour after the time of return set forth in the writ ; but may in his discretion, on motion of either party, strike off the same within twenty-four hours thereafter, upon such terms as he deems reasonable. R. S. Ch. 83, § 11.

ABSENCE OF JUSTICE.

When a trial justice is unable to attend at the time and place appointed by him for the trial of any suit already entered, or at which any writ is returnable before him, any other trial justice who might legally try the same, or any justice of the peace and quorum, residing in the same or adjoining town, may attend and continue such action, once, to a day certain, not exceeding thirty days, and note the fact on the writ, and in his own docket ; and if the inability is not removed at that time, such action, at the time and place fixed in the continuance, may be entered before, and tried by some other trial justice of the same town, or if none such resides therein, then before some trial justice of the same county, who may render judgment and issue execution as if the action had been originally returnable before him. Ib. § 12.

SUMMONING WITNESSES.

Every trial justice and justice of the peace may issue subpoenas for witnesses in civil actions pending before any court, or persons authorized to examine witnesses. Ib. § 13.

COURTS, PLACES OF HOLDING, AND CONTINUANCE OF.

It is the practice, in some of the counties of this State, to make the writs returnable on the Saturday of each week, and to continue as a matter of course to the Saturday of the next week, if the defendant appears. Where such practice prevails the justice ought not to drive either party to trial, although the other party may be ready with his witnesses, unless a notice has been served by the party ready for trial, upon the other party, that he shall insist upon trial at the return-day of the writ. Such notice should be served a reasonable time before the return-day.

And in all cases where absent defendants, other parties, or executors, or administrators are to be cited in, the action must be continued.

The magistrate has, however, no right to order a continuance prior to the return-day of the writ. And if the action has been once continued, he has no right to order a further continuance, before the day arrives to which the first continuance was made. 17 Me. 113.

Any trial justice may hold a court at his dwelling house, office, or other suitable place, and the writ shall be made returnable accordingly. He may adjourn his court by proclamation, from time to time, as justice requires. In actions before him the defendant shall plead the general issue, and need not file any brief statement, except when the title to real estate is in question. When an action in which the defendant does not appear, is continued at the request of the plaintiff, only one travel and attendance shall be taxed for him, unless the defendant agrees, in writing, to such continuance. *Ib.* § 14.

ACTIONS DISPOSED OF.

If any person duly served with process does not appear and announce thereto, his default shall be recorded, and the charge in the declaration taken to be true ; and on such default, and when the action is, on trial, maintained, the justice shall enter judgment for such sum, not exceeding twenty dollars, as he finds due to the plaintiff, with costs, and issue execution. *Ib.* § 15.

If the plaintiff fails to enter and prosecute his action, or if,

on trial, he does not maintain his action, the defendant shall recover judgment for his costs to be taxed by the justice; and execution shall issue therefor. *Ib.* § 16.

OF APPEAL.

Any party aggrieved by the judgment of the justice, may appeal to the next supreme judicial court in the same county, and may enter such appeal at any time within twenty-four hours, Sunday not included, after the judgment; and in that case no execution shall issue, and the case shall be entered and determined in the supreme judicial court. *Ib.* § 17.

Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal. *Ib.* § 18.

The appellant shall, at the appellate court, produce a copy of the record, and of all the papers filed in the cause, except depositions or other written evidence or documents, the originals of which shall be produced; and if he fails to produce such papers, and enter and prosecute his action, the court, on complaint of the adverse party, may affirm the former judgment with costs. *Ib.* § 19.

As to the manner of taking recognizances in civil cases, it is sufficient to ask the principal and sureties if they are willing to enter into the usual recognizance for prosecuting the appeal at the supreme judicial court. A party may recognize for the prosecution of an appeal by attorney.—1 Pick. 461. Nothing will be presumed in favor of the jurisdiction of an inferior magistrate, as it is not general, but given and limited by particular statutes. Therefore, in the condition of the recognizance for prosecuting an appeal, the justice ought to recite so much of the cause, that it may appear that he had legal cognizance of it. And whenever a justice recognizes a party to appear at any court of record, it is his duty to transmit the recognizance to that court, that it may be entered of record.—4 Mass. 641. A justice of the peace was fined for not returning a recognizance taken by him, until the second day of the term. 14 Mass. 205.

EXECUTIONS.

Executions shall not be issued by a trial justice, until twenty-four hours after the rendition of judgment, and shall be made returnable in three months from the day they are issued. Ib. § 20.

When a debtor removes or is out of the county in which judgment is rendered against him by a trial justice, or municipal or police court, such justice or judge may issue execution against him, directed to the proper officers in the county where he is supposed to be ; and it shall have the same force as if issued by a justice or court of the latter county. Ib. § 21.

SCIRE FACIAS.

Every trial justice may issue writs of scire facias against executors or administrators, upon a suggestion of waste, after judgment against them ; against bail in civil actions, and indorsers of writs ; and enter judgment and issue execution, as any court might do in like cases. Ib. § 22.

In case of scire facias against bail, indorsers of writs, executors or administrators, in all trustee processes, or original writs against two or more defendants, before a trial justice or a judge of a municipal or police court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the writ or execution to any proper officer of the county where the defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him. Ib. § 23.

RECORDS, HOW KEPT AND TRANSCRIBED.

Every trial justice shall keep a fair record of his proceedings ; and if he dies after giving judgment in a cause, and before it is satisfied, any other justice of the county may, on complaint of the creditor, issue a summons to the person in whose possession the record of such judgment is, directing him to produce and deliver it to him ; and if he contemptuously refuses to produce it, or to be examined respecting it on oath, the justice may commit him to prison, as punishment for the contempt, to be detained until he submits to such examination and produces the record ;

and when the record is so delivered to him, he shall transcribe it upon his own book of records, and return the original to the person who produced it; and a copy thereof attested by the transcribing justice, or otherwise proved, shall be legal evidence in all cases where an authenticated copy of the original might be received. *Ib.* § 24.

On such transcribed record, the justice may issue execution as if the judgment was rendered by himself, changing the form as the case requires; but no such first execution shall issue after one year from the time the judgment was rendered, unless on *scire facias*. *Ib.* § 25.

Every justice, who removes from the State, shall first deposit with the clerk of the judicial courts in the county for which he was commissioned, all his official records and papers; and the executor or administrator of a deceased justice shall so deposit all the deceased's official records and papers that come into his hands; and if either neglects to do so, he shall forfeit one hundred dollars. The clerk shall receive and safely keep such records and papers, and may grant certified copies thereof, which shall be as good evidence as if certified by the justice. *Ib.* § 26.

If any justice dies or removes from the State, without recording and signing any judgment by him rendered in an action before him, and his docket, original writ, and papers pertaining thereto, and execution if any issued, are so deposited in the office of the clerk, he shall, on payment of usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies shall be legal evidence. But if such records have not been deposited with the clerk, the plaintiff in any action may use, in place of such certified copy, an execution issued on such judgment by the justice with an affidavit thereon made by the plaintiff or his attorney, that it is not satisfied, or satisfied in part only, as the case may be. *Ib.* § 27.

POWERS OF JUSTICES WHEN COMMISSION EXPIRES.

Any justice, whose commission expires and is not renewed, may, during two years thereafter, certify copies of judgments rendered by him while in commission, and issue and renew executions

thereon, which shall be obeyed by the officer, as if the commission of the justice had not expired ; and after two years such copies may be certified and executions issued and renewed, as in case of the death of the justice. Ib. § 28.

JUSTICE NOT TO BE OF COUNSEL.

No justice shall be of counsel for or give advice to either party, in a suit before him, or be subsequently employed as counsel or attorney in any case tried before him ; nor hear or determine any civil action commenced by himself ; and every action so commenced shall abate. Ib. § 29.

Trial justices are declared to be, *ex-officio*, justices of the peace and quorum, and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justice, are of equal effect. Ib. § 30.

AMENDMENTS.

No process or proceeding in courts of justice shall be abated, arrested, or reversed, for want of form only, or for circumstantial errors or mistakes which by law are amendable, when the person and case can be rightly understood. Such errors and defects may be amended, on motion of either party, on such terms as the court orders. R. S. Ch. 82, § 9. 6 Me. 307 ; 16 Me. 263 ; 22 Me. 311 ; 46 Me. 327 ; 47 Me. 152 ; 54 Me. 196, 493, 496.

Of charging a writ of original summons, to a writ of attachment ; 15 Me. 400 ; 464 ; 26 Me. 263.

Test of writ ; 15 Me. 431.

Return day of writ ; 16 Me. 266 ; 17 Me. 416 ; 35 Me. 121.

When in an action pending, the loss or destruction of a writ or process after service is proved by affidavit or otherwise, the court may allow a new one to be filed, corresponding thereto as nearly as may be, to have the same effect as the one lost or destroyed. Ib. § 10.

When there are two or more defendants, the writ may be amended by striking out one or more of them, on payment of costs to him to that time. A writ founded on contract, express or im-

plied, may be amended by inserting additional defendants; and the court may order service to be made on them, and their property to be attached as in case of original writs; and on return of service duly made, they shall be deemed parties to the suit, but not liable to costs before such service. *Ib.* § 11.

The distinctions between actions of trespass and trespass on the case is abolished. A declaration in either form is good. *Ib.* § 12. 2 Me. 120; 5 Me. 379; 11 Me. 127; 13 Me. 386; 20 Me. 43; 23 Me. 244; 25 Me. 330; 23 Me. 524; 34 Me. 34; 35 Me. 534; 37 Me. 563; 45 Me. 17, 438, 444; 56 Me. 172.

The power to grant amendments, so far as it legally extends, is a discretionary power vested in the court which exercises it, and cannot be appealed from or controlled.—3 Mass. 208; 6 Me. 183, 216. The party who has obtained leave to amend should immediately put the amendment in writing and file it with the papers in the case. Amendments by increasing the *ad damnum*, or the sum directed to be attached, or correcting the date of the return, will discharge an attachment, as to third persons who have, without fraud or notice of the attachment, acquired an interest in the property between the service and amendment. 9 Pick. 167.

If a wrong writ be issued, as a *capias* against an executor or a corporation, or an illegal service made, as property attached or the body arrested on an original summons, no amendment will be allowed, as none could set it right; the whole proceeding is void. The test of a writ may always be amended on motion.—2 Pick. 592; 15 Me. 431. The seal of a writ is matter of substance and not amendable.—12 Me. 196. But a seal may be affixed to an execution even after service, it being a judicial, not an original writ.—3 Greenl. 29. The direction to officers may be amended, if the writ has been properly served; as, by inserting a direction to constables after a constable has served it.—9 Mass. 95, 217. The *ad damnum* may be increased, diminished, or if none was inserted, it may be supplied by leave.—6 Greenl. 307.

A writ returnable on the Lord's day, fourth day of July, on the second Monday in September, on the annual fast or thanksgiving day, or on any day designated in this state, for the choice of

electors of president or vice president of the United States is doubtless void, and not amendable. If no return day is inserted, it may be amendable, should the defendant appear, but not otherwise. If there is no declaration in the writ, the defect is not amendable.—1 Pick. 32; 2 id. 420; 5 id. 221. But if there is a declaration, however informal, it may be amended, but not by introducing a new cause of action.—5 Pick. 304, 3 Met. 547. New counts are permitted to be filed, when the matter alleged in them is the same as in the old; they must be of the like kind of action, subject to the same plea, and such as might have been originally joined with the first count.—Ib. But the declaration cannot be amended so as to change the form of action, as from *debt* to *case*.—3 Mass. 208. But in cases of misjoinder of actions, as *tort* with *assumpsit*, a misjoined count may be struck out.—5 Pick. 425. Misnomer of corporations or individual defendants, when the service has been right, or when the defendant has appeared, misnomer of plaintiffs, or mistakes in the addition, description and residence of the parties, may be amended.—10 Mass. 203; 11 id. 338; 3 Me. 243; 13 Me. 386. An infant suing in his own name may amend by inserting the name of his *prochein amy* or next friend.—8 Pick. 552. All clerical errors, as omissions, improper use of figures and abbreviations, are amendable of course; wrong venue, and even misdescription of a note as to the place of its date, may also be amended.—5 Pick. 412. An item of an account which the plaintiff fails to prove, may be struck out on motion.—16 Me. 282. A writ dated by mistake before the cause of action accrued, was amended on affidavit by substituting the date when it was actually made.—14 Me. 395. An amendment by adding the names of other plaintiffs cannot be made; nor is it settled that the name of a plaintiff may be struck out.—*Howe's Prac.* 370. In a writ of entry, leave to strike out the name of one of the demandants was refused.—2 Me. 120.

The return of a writ may be amended according to the truth, even several years after it was made, where the rights of third parties are not concerned; but the amended return must conform to the truth, at the peril of the officer.—11 Mass. 413. If the

service was not right, no amendment of the return can make it right. And such amendments will never be permitted, so as to affect the rights of persons not parties to the suit.—3 Me. 260 ; 9 Pick. 167. An officer who had merely made minutes of the service of a trustee process, was permitted to complete and sign his return, after he had ceased to be an officer. 1 Pick, 461.

Amendments in matter of form will be allowed as of course. Amendments in matter of substance may be made in the discretion of the justice, on payment of costs, or on such other terms as the justice may impose. 15 Me. 400.

DEATH, MARRIAGE AND INSANITY OF A PARTY.

When a party in a pending suit dies, and his death is suggested on the record, and the cause of action survives, his executor or administrator may become a party, or at the request of the other party, be summoned to appear and become a party. Service of the summons shall be made on him fourteen days before the term to which it is returnable. If he neglects to appear, judgment may be entered by nonsuit or default according to the provisions of chapter eighty seven. If the suit is in equity, his executor, administrator, or heirs at law, may in like manner appear or be summoned without a bill of revivor. R. S. Ch. 82, § 30.

When an unmarried woman, a party to a pending suit, is married, her husband, on his request, may be admitted as a party as if originally joined in the suit. Ib. § 31.

When a party to a suit becomes insane, it may be prosecuted or defended by his guardian, who, on application of his friend, or of the other party, may be appointed for that purpose by a justice of the court in term time or in vacation. He shall be entitled to a reasonable compensation, and not be liable for costs. Ib. § 32.

No action, commenced in his official capacity by a public officer, is abated by his ceasing to hold the office ; it may be prosecuted by his successors to the same uses ; and the necessary amendments may be made and notices given. Ib. § 57.

DEFAULT AND TENDER.

In any personal action, the defendant may, in writing entered of record with its date, offer to be defaulted for a specified

sum. If accepted, interest may be added from that date to date of judgment. If not accepted within such time as the court orders, it shall not be offered in evidence or have any affect upon the rights of the parties, or the judgment to be rendered, except the costs. If the plaintiff fails to recover a sum as due at the time of the offer greater than the sum offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time ; and his judgment for costs may be set off against the plaintiff's judgment for debt and costs. *Ib.* § 21.

A tender, with the costs then accrued, may be made after action brought and before its entry, to the plaintiff or his attorney, with the same effect as if made before action brought. In action against towns founded on injury to the person or damage to property as defects in ways, a town may make a tender before the commencement or entry of the action, or offer to be defaulted for a specified sum, with the same effect as in actions on cotract. *Ib.* § 22.

INTEREST ON JUDGMENTS.

Interest is to be allowed on amount found due for damages and costs, in actions on judgments of a court of record. *Ib.* § 28.

WILFUL TRESPASS.

In action of trespass on property, the court and jury, or magistrate, shall determine whether it was committed wilfully ; if so found, a record thereof shall be made, and a memorandum of it on the margin of the execution. *Ib.* § 34.

SET OFF.

Demands between plaintiffs and defendants may be set off against each other as follows :

The defendant, on the first day of the term to which the writ is returnable, must file a brief statement of his demand in substance as certain as in a declaration, which, by leave of court, may be amended. The clerk shall enter on it and on the docket the date, and on the docket under the action, notice of its filing, before the new entries are called. *Ib.* § 48.

A demand originally payable to the defendant in his own right, founded on a judgment or contract, express or implied, for

the price of real or personal estate sold, for money paid or had and received, for services done, for a liquidated sum, or for one ascertainable by calculation, may be set off. *Ib.* § 49.

The demand must be due from all the plaintiffs to all the defendants jointly. When there is a dormant partner, claims due from the ostensible one may be set off as if there was no dormant partner. *Ib.* § 50.

When a plaintiff has received notice that a demand against him has been assigned to the defendant, and has agreed to pay it to him, or to receive it as payment towards his demand, before his suit was commenced, it may be set off. *Ib.* § 51.

When a defendant had notice of the assignment of a demand, he cannot have any demand set off that accrued or was acquired after such notice. *Ib.* § 52.

When an action is brought by one person for the use of another, a demand against the latter may be set off. *Ib.* § 53.

When the demand to be set off is a bond or contract with a penalty, the sum equitably due only can be set off. *Ib.* § 54.

Demands against a person belonging to a defendant at the time of the death of such person, may be set off against claims prosecuted by his executor or administrator; and if a balance is found due to defendant, judgment shall be in like form and of like effect as if he had commenced a suit therefor; but if the estate is insolvent, it must be presented to the commissioners or added to the list of claims, as other judgments are. *Ib.* § 55.

In actions against executors, administrators, trustees, or others in a representative capacity, they may set off such demands as those whom they represent might have set off in actions against them; but no demands due to or from them in their own right, can be set off in such actions. *Ib.* § 56.

In joint or several actions by the executor or administrator of an estate represented insolvent, against two or more persons having joint or several demands against such estate, the demands may be filed in set-off by either of the defendants, at the first term of the court, or at the first term after such representation of insolvency, if made after the commencement of such actions;

and if, on the trial, a balance is found due to the defendants jointly, or to either of them, judgment shall be entered for such balance as the jury find or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates. Ib. § 57.

The trial may proceed in cases of set-off on issue joined without a plea of set-off; and if an issue is not otherwise formed, the defendant may, except in actions of assumpsit, plead that he does not owe the sum demanded; and the plaintiff will be entitled to every defence against such set-off, that he might have, by any form of pleading, to an action against him on the same demand. Ib. § 58.

When a demand is filed in set-off, the action cannot be discontinued without consent of the defendant. The statute of limitations is applicable to demands filed in set-off, as if actions were commenced on them at the date of the plaintiff's action. Ib. § 59.

When no balance is found due to either party, no costs are recoverable. The party recovering a balance recovers costs. No judgment for debt can be entered against a plaintiff, when the demand sued was assigned to him before the suit was commenced, or for a balance due from another person. Ib. § 60.

Similar proceedings in set-off may take place before municipal and police courts and trial justices, the demand in set-off being filed on the return day of the writ; but judgment cannot be rendered for a defendant for more than twenty dollars, exclusive of costs. Ib. § 61.

ENTRY OF ACTION.

The writ must be entered by the justice on the day that it is returnable. The entry is made in his docket upon notice from the attorney, and the number as it stands in the justice's docket should be marked on the back of the writ. The magistrate should make in his docket a minute of the names of the parties, under which should be minuted such orders and judgments as may be from time to time made in the case.

DEFAULT.

If any person, duly served with process, shall not appear

and answer thereto, his default shall be recorded, and the charge in the declaration shall be considered as true.

NONSUIT.

If the plaintiff, after entering his action, shall think proper not to prosecute it, he becomes nonsuit, and the justice enters the fact upon his docket.

NEITHER PARTY.

When a suit is compromised after entry, by agreement between the parties, the entry fee being paid, the justice enters that "neither party appears," in which case neither party is entitled to costs.

APPEARANCE.

An appearance by the defendant, at the time and place for the return of the writ, or if the action be continued, at the time and place to which it is continued, prevents a default. This appearance may be made, either by the defendant personally, or by attorney. The magistrate should minute on his docket the day of the appearance, and if by any other person than the defendant, the name of the attorney. An appearance may be general or special. As the effect of a general appearance is to waive technical objections, the magistrate should be careful, where the appearance is special, to note that it is so. 43 Me. 374.

PLEADINGS AND MOTIONS.

The action having been entered, and the defendant appearing by himself or attorney to answer to it, the mode of answering first in order, is by a motion to dismiss the action. This can only be made when there is some defect in the plaintiff's writ or proceedings which renders the process void, and must be made before issue joined. But the more common mode of proceeding is by plea in abatement, which, likewise, must be made before issue joined. Any defect not amendable may be pleaded in abatement, as that the court has not jurisdiction of the action; that the plaintiff is a married woman, in which case her husband should have joined in the action, except in certain cases where the law removes the disability; that the plaintiff is a fictitious person; misnomer of either party, unless cured by defendant's appearance, or unless the party

was as well known by the name used as by his real name ; non-joinder or misjoinder of plaintiffs ; pendency of a prior suit for the same cause ; or any substantial defect in the writ, as the omission of the name of the justice, or of the place or time of trial, &c. These are the principal defects which are not amendable.

The more common practice is to write the plea upon the back of the writ, the plaintiff joining issue, upon the same paper, in the brief form, "and the plaintiff likewise." If the plea is written upon a separate paper, it is usually enclosed in the writ. It will be found convenient to note upon the back of the plea, and upon all papers filed in the cause, what the paper is, the cause in which, and the time when it is filed.

When it is provided in the statute that the general issue shall be pleaded in all, excepting certain excepted cases, it is not intended to exclude such pleas and motions as go to defects in the plaintiff's writ or proceedings, and which are generally waived by pleading the general issue. The more common forms of them are those of motions to dismiss the action, and pleas in abatement. The former can only be entertained, when the matter of exception is apparent upon the face of the proceedings, or more plainly, when the magistrate may have information of the defect, without proof of facts apart from the papers before him. When it is necessary to bring before him some matter of fact not apparent in the record and proceedings, a plea in abatement must be filed. 1 Met. 508.

DEMURRERS.

Demurrers are not often resorted to before magistrates. When, however, a party is willing to admit the facts alleged in the declaration of the plaintiff, or in the plea of the defendant, but at the same time desires to deny that the facts so admitted are sufficient to sustain the action, or the answer to the action, as the case may be, he may have that question tried by filing a demurrer to the declaration or plea. A form for a demurrer will be found in a subsequent chapter of this work.

BILL OF PARTICULARS.

A bill of particulars is a statement of the plaintiff's cause of action, and when filed, becomes, in fact, a part of the declara-

tion, and the plaintiff is bound by it. It may, and should be ordered, when the plaintiff fails to set forth his cause of action with sufficient distinctness, for the defendant to know what he is summoned to answer to. In actions of assumpsit on notes of hand and book accounts, nothing is more common than for the plaintiff to declare in the general counts alone, which give the defendant no intimation of the cause of action. The magistrate may require a bill of particulars on motion of the defendant, and refuse to proceed with the cause until the plaintiff complies with the order. *Howe's Pr.* 410, 418.

After the bill of particulars is furnished, the plaintiff cannot, upon trial, contradict it, or give evidence of any demand not contained in it, unless specially declared on in some count in the declaration. A bill of particulars is, however, amendable, in the discretion of the court. *Colby's Pr.* 203, 105.

WITNESSES, HOW COMPELLED TO ATTEND COURT.

When a person, duly summoned, and obliged to attend before any judicial tribunal, fails to do so without a reasonable excuse, he is liable to the party aggrieved for all damages sustained thereby. The judge of such tribunal may issue a *capias* to apprehend and bring him before him; and he may be fined not exceeding twenty dollars and the costs of the attachment, and committed until the same and the costs of commitment are paid. *R. S. Ch.* 82, § 90.

When a witness refuses to answer such questions as the court allows to be put, he may be fined not exceeding twenty dollars, and committed until the fine and costs of commitment are paid. *Ib.* § 91.

ADMINISTRATION OF OATH.

A person, to whom an oath is administered, shall hold up his hand, unless he believes that an oath administered in that form is not binding, and then it may be administered in a form believed by him to be binding. One not believing the christian religion may be sworn according to the ceremonies of his religion. *R. S. Ch.* 82, § 92.

Persons conscientiously scrupulous of taking an oath may

make affirmation as follows : " I do affirm under the pains and penalties of perjury," which shall be deemed of the same force and effect as an oath. *Ib.* § 93.

TRIAL.

If the plaintiff enters his action, and the defendant appears and files his pleadings, the plaintiff will first open his case and put in his evidence, subject to the cross-examination of the defendant, the defendant next proceeds to open his defence and puts in his evidence, subject to the cross-examination of the plaintiff. The plaintiff then puts in his rebutting testimony, and if the defendant has any further in reply, he follows with it ; after which the arguments are made, first for the defendant, then for the plaintiff. The justice will then, upon the issue joined, and the evidence presented, render his judgment in the case, according to his knowledge of the law.

The justice should render his judgment on the facts legally proved. He has no right to make himself a witness, and take into consideration, facts within his own knowledge, of which there is no evidence in the case. 10 Johns. 250.

If he find for the plaintiff, he will assess damages, for which he will give judgment as also for costs. If he find for the defendant, he will give judgment for costs alone, unless, in case of set-off filed, he shall find that the balance of account is in favor of the defendant, in which case he will give judgment for such balance with costs.

FEES OF TRIAL JUSTICES IN CIVIL CASES.

For every blank writ of attachment and summons thereon, or original summons, ten cents.

For every subpoena for one or more witnesses, ten cents.

For the entry of an action, or filing a complaint in civil causes, including filing of papers, swearing of witnesses, examining, allowing, and taxing the bill of costs, and entering judgment and recording the same, thirty cents.

Continuance in a civil action, five cents.

For the trial of an issue, eighty cents, and when more than one

day is used in the trial, two dollars for each day, after the first, actually employed.

For a copy of a record or other paper, at the rate of twelve cents a page.

For a writ of execution, fifteen cents.

For a recognizance to prosecute an appeal, including principal and surety, twenty cents.

For taking a deposition, affidavit, or disclosure of a trustee, in any cause not pending before himself, twenty cents ; for writing the same with the caption, and for the notification to the parties and witnesses, at the rate of twelve cents a page ; the justice who takes such affidavit, deposition, or disclosure, shall certify the fees of himself, of the witnesses, or party disclosing, and of the officer serving the notifications.

For taking a deposition in perpetual memory of the thing, the same fees as in taking other depositions.

Recognizance of debt and recording, forty-two cents.

Drawing a rule for submission to referees, and acknowledging the same, thirty-three cents.

Writ to remove a nuisance, thirty-three cents.

Calling a meeting of any corporation, fifty cents.

For travelling on official duty, twelve cents a mile one way. R. S. Ch. 116, § 2.

OFFICERS' FEES.

For the service of an original summons or scire facias, either by reading or copy, or for the service of a capias or attachment with summons on one defendant, fifty cents ; if served on more than one defendant, fifty cents more for each.

If the sheriff, or his deputy, by the written direction of the plaintiff, his agent, or attorney, makes a special service of any writ of attachment by attaching property, he shall receive therefor seventy-five cents, including the summons thereon ; and for taking the body on a capias, he shall be allowed fifty cents for each defendant on whom such writ is so served.

Where the officer is by law directed to leave a copy, or gives a copy of any precept upon demand, he may charge at the rate of

twelve cents a page, which, in the latter case, shall be paid by the party demanding the copy.

If real estate is attached, the officer may charge twenty-five cents for leaving with the register of deeds an attested copy of his return and other particulars, as required by law, and in lieu of travel, legal postage from the post-office nearest the residence of the officer; and the usual rate of travel from the residence of such officer to said post-office; and he shall pay the register ten cents, and tax the same with his own fees.

For a bail bond and writing the same, including principal and sureties, to be paid by the person admitted to bail, and taxed for him, if he should prevail, twenty cents.

For the service of subpoena, notice to an adverse party, or other process in which there is no command to make return thereof, twenty-five cents; and if by copy, at the rate of twelve cents a page for the copy; and travel as in other cases; and service on an adverse party, by giving him an attested copy of the notice in hand, shall be valid.

For travel for the service of any writ, warrant, execution or other process, when not otherwise expressly provided by law, four cents a mile; the travel to be computed from the place of service to and from the place of return by the usual way; but if the distance between those places is more than fifty miles, only one cent a mile shall be allowed for all travel exceeding that distance; only one travel shall be allowed for any one precept; but if the same is served on more than one person, the travel may be computed from the place of service most remote from the place of return, with all further necessary travel in serving such precept; but if the same is served on more than one person, the travel may be computed from the place of service most remote from the place of return, with all further necessary travel in serving such precept; and with all reasonable sums paid by the officer for boat hire, and crossing any toll bridge or ferry.

No charge of any such officer for service, travel, or expenses paid, shall be allowed, unless the items thereof are expressly stated, and the amount of each. Ib. § 5.

FEES OF WITNESSES.

For attendance at a trial before a magistrate, fifty cents a day, and for travel six cents for each mile's travel going out and returning home. Ib. § 13.

ALLOWANCE TO PARTIES AND ATTORNEYS IN CIVIL CAUSES.

To parties recovering costs in any court or before a trial justice, thirty-three cents for each day's attendance, and the same for every ten miles travel.

No plaintiff shall be allowed for more than three days' attendance when the defendant is defaulted, unless the defendant has appeared and answered to the plaintiff's suit; in which case, if the defendant is defaulted after three days, no attendance shall be allowed the plaintiff after the day when the default happens, and in no case for more than six days in all, unless the action is entered on the trial docket; and then, not exceeding ten days in each term.

Costs for travel shall be taxed in all cases according to the distance of the plaintiff or his attorney who is nearest to the place of trial; and when the action is in the name of an indorsee, such costs for travel shall be taxed according to the distance of an attorney, payee, or indorsee, who is nearest to the place of trial; but no costs for travel shall be allowed for more than ten miles distance from any justice, municipal or police court, nor for more than forty miles distance from any other court, unless the plaintiff recovering costs actually travels a greater distance, or the adverse party, if he recovers costs, by himself, his agent, or attorney, travels, in fact, a greater distance for the special purpose of attending court in such cause.

For a power of attorney, fifty cents. Ib. § 14.

Form of Trial Justice's Docket in civil causes, with forms of entries in conformity with the foregoing provisions and instructions.

May 1, 1871. No. 1.—	JOHN SMITH, A. B. (Attorney.)	vs.	RICHARD ROE, C. D. (Attorney.)
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Plaintiff nonsuit.

Judgment for defendant for costs, \$—.

Defendant defaulted.

Judgment for Plaintiff; for debt, \$—, costs, \$—.

Execution issued —, 187—.

Account in set-off filed.

Continued to May 10. 187—.

On motion of plaintiff, leave to amend his writ by inserting, &c., (or striking out, &c.)

On motion of plaintiff granted leave to amend his writ by, &c., upon payment of defendant's costs to this date.

Death of plaintiff (defendant) suggested, continued to —.

Dismissed, by reason of death of —.

(This entry is made when the action does not survive.)

A. B. administrator (or executor) of deceased comes in and prosecutes (or defends).

Summons to administrator issued.

On motion of A. B., husband of plaintiff allowed to prosecute this suit with plaintiff.

Order of notice on defendant to appear.

Offer to be defaulted for the sum of \$—, to be accepted forthwith.

Motion granted to bring money into court.

Action dismissed on motion filed.

Neither party as per agreement on file.

Plea in abatement allowed and writ quashed.

Plea in abatement overruled; defendant to answer over.

Demurrer filed and overruled.

Trial on issue joined.

Judgment for debt \$— and costs taxed at \$—.

(Judgment for defendant for costs taxed at \$—.)

Defendant appeals.

Defendant, principal, }
A. B. } Recognize in the sum of \$—.
C. D. }

Trustee discharged.

Trustee answers and is charged in the sum of \$—.

Plaintiff discontinues his case as to N. F.

No. 1. ORIGINAL SUMMONS FOR APPEARANCE.

S—, ss. To the sheriff of said county of S., or either of his deputies, or
 [L. s.] the constables of the towns within the said county, or to any
 or either of them. Greeting.

In the name of the state of Maine, you are required to summon and give notice unto T. P., of B. aforesaid, [addition] (if he may be found in your precinct) that he appear before me, I. D., Esq., one of the trial justices for the county aforesaid, at my office in B., on the — day of —, at — of the clock in the — noon; then and there to answer to E. L., of M. [addition] in a plea of — to the damage of the said E. L. (as he saith) the sum of — as shall then and there appear, with other due damages, And of this writ, with your doings therein, you are to make true return unto myself, at or before the said — day of —. Dated at B. aforesaid, the — day of —, in the year of our Lord —.

I. D., Trial Justice.

No. 2. CAPIAS OR ATTACHMENT.

S—, ss. To the sheriff of the said county of S. or either of his deputies,
 [L. s.] or the constables of the town of B. within the said county, or
 to any or either of them. Greeting.

In the name of the state of Maine, you are required to attach the goods or estate of T. P. of B. aforesaid, [addition] to the value of —, and for want thereof to take the body of the said T. P. (if he may be found in your precinct) and him safely keep, so that he may be had before me, I. D., Esq., one of the trial justices for the county aforesaid, at my dwelling house in B., on — the — day of — at — of the clock in the — noon; then and there to answer to E. L. of M. [addition] in a plea of — to the damage of the said E. L. (as he saith) the sum of —, as shall then and there appear, with other due damages. Hereof fail not, and make due return of this writ, and of your doings therein, unto myself, at or before the said — day of —. Dated at B. aforesaid, the — day of —, in the year of our Lord —.

I. D., Trial Justice.

No. 3. SUMMONS ACCOMPANYING THE ABOVE, TO BE SERVED WHEN GOODS ARE ATTACHED.

L. s. S—, ss. To T. P. of D. in the county of S. [addition.] Greeting.

In the name of the state of Maine, you are commanded to appear before me, I. D., Esquire, one of the trial justices for the county aforesaid, at my dwelling house in B. on — the — day of —, at — of the clock in the — noon, to answer unto E. L. of M. [addition] in a plea of — as set forth in the writ; which plea the said E. L. hath commenced to be heard and tried before me: And your goods or estate are attached to the value of — for security to satisfy the judgment which the said E. L. may recover upon the aforesaid trial. Fail not of appearance at your peril. Dated at B. aforesaid, the — day of —, in the year of our Lord —.

I. D., Trial Justice.

No. 4. CERTIFICATE OF CREDITOR'S AFFIDAVIT ATTACHED TO CAPIAS.

O—, ss. 187—. Personally appeared the within named creditor, and made oath that he has reason to believe, and does believe, that —, the within named debtor, is about to depart and reside beyond the limits of the state of Maine, and to take with him — property or means of his own exceeding the amount required for his — immediate support, and

that the demand in the within process, or the principal part thereof, amounting to at least ten dollars, is due to him, the within named creditor, and is unpaid. Before me,

I. D., Trial Justice.

No. 5. EXECUTION.

S—, ss. To the sheriff of our said county of S., or either of his deputies,
[L. s.] or the constables of the towns within our said county, or any or
either of them. Greeting.

Whereas E. L. of N. [addition] on the ——— day of ———, before I. D., Esquire, one of our trial justices for our county aforesaid, recovered judgment against T. P., of B. [addition] for the sum of ——— debt or damages and ——— dollars and ——— cents for charges of suit, as to us appears of record; whereof execution remains to be done, [or, if partly paid, add, in part, to wit, for the sum of ———.]

We command you, therefore, that of the money of the said debtor or of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied unto the said creditor the aforesaid sums, being ——— dollars and ——— cents in the whole, with interest on the same from the ——— day of ———, being the time of rendition of judgment; and also that out of the money, goods or chattels of the said debtor you levy ——— more for this writ, together with your own fees.

[If the debtor is exempt from arrest by ch. 113, § 19, of R. S., omit the following directions; if not, insert.]

And for want of such money, goods or chattels of the said debtor to be by him shown unto you, or found within your precinct, to the acceptance of the said creditor, for satisfying the aforesaid sums: we command you to take the body of the said debtor and him commit unto our jail in B.: and we command the keeper thereof accordingly to receive the said debtor into our said jail, and him safely keep until he pay the full sums above-mentioned, with your fees, or that he be discharged by the said creditor or otherwise by order of law.

Hereof fail not, and make return of this writ, with your doings therein, unto our said justice, within three months next coming. Witness our said justice, at B. the ——— day of ———, in the year of our Lord one thousand eight hundred and seventy.

I. D., Trial Justice.

No. 6. WRIT OF SCIRE FACIAS.

STATE OF MAINE.

[L. s.] S—, ss. To the sheriff of our county of S., or his deputy.
Greeting.

Whereas C. D. of B. [addition,] by the consideration of S. F., Esquire, one of the trial justices within and for our said county of S. at a court held before said justice, at his dwellinghouse in P. on the ——— day of ——— recovered against A. B. of E. [addition] the sum of ——— dollars and ——— cents, debt or damage; and also ——— dollars and ——— cents, for costs and charges, by him about his suit in that behalf expended; whereof the said A. B. is convict, as to us appears of record; and although judgment be thereof rendered, yet the execution for the said debt or damage and costs, doth yet remain to be made; whereof the said C. D. hath made application to us to provide a remedy for him in that behalf: Now, to the end that justice be done, we command you that you make known unto the said A. B. that he be before S. F., Esq., one of the trial justices within and for said county of S. on the ——— day of ——— to show cause (if any he have) wherefore the said C. D. ought not to have his execution against him, the said A. B., for

his debt and damage and costs aforesaid; and further to do and receive that which our said justice shall then consider; and then and there have you this writ with your doings therein. Herein fail not. Witness our said justice at P. the — day of —, in the year of our Lord —.

S. F., Trial Justice.

No. 7. RECORD OF JUDGMENT ON A DEFAULT.

STATE OF MAINE.

L—, ss. At a court held before me, A. B., Esquire, one of the trial justices within and for said county, at my dwellinghouse in S. in said county, on the — day of — in the year of our Lord one thousand eight hundred and seventy —.

C. D. of E., in said county, [addition] plaintiff,

versus

F. G. of H., in said county, [addition] defendant.

In a plea of the case for that [here insert the declaration] to the damage of the said D., as he saith, the sum of twenty dollars, as by writ on file, dated — 187—, will more fully appear. This action was then and there entered before me, the said justice, and now the plaintiff appears [or appears by R. S., Esq., his attorney] and the defendant, though three times publicly called to come into court, makes default of appearance here. It is therefore considered by me, the said justice, that the said C. do recover of the said F. the sum of — dollars and — cents damage, and costs of suit taxed at — dollars and — cents. Given under my hand, the day and year aforesaid.

A. B., Trial Justice.

Execution issued —, 187—.

No. 8. ON A NONSUIT.

[Caption in this and subsequent forms as before.]

In a plea, &c. — as by writ on file, dated — 187—, will more fully appear. This action was then and there entered before me, the said justice, on the — day of —, and adjourned to this time, and now the defendant appears, [or appears by R. S., Esquire, his attorney] and the plaintiff, though three times publicly called to come into court, fails of appearance here, and is nonsuited. It is therefore considered by me, the said justice, that the said F. do recover of the said C. costs of suit, taxed at the sum of — dollars and — cents. Given under my hand the day and year aforesaid.

A. B., Trial Justice.

No. 9. ON A PLEA IN ABATEMENT.

In a plea, &c. [as before.] The parties appear, the plaintiff enters his action and the defendant comes, &c., [insert the pleas] which pleas being by me fully heard, I adjudge that there is sufficient matter in the defendant's plea to abate the said writ. It is therefore considered by me that the said writ be abated, and that the said — recover the said — &c. [or, which pleas are by me, the said justice, overruled, and the defendant pleads as follows, and says he never promised, &c.]

No. 10. IF IT APPEARS THAT TITLE TO REAL ESTATE IS CONCERNED.

As it appears that the title to real estate is concerned or brought in question in this action, and the plaintiff [or defendant] requests to have the same transferred to the Supreme Judicial Court next to be holden, &c., and has recognized, as the law directs, to enter the same in said court, therefore all proceedings before me are stayed, and said action is transferred to the Supreme Judicial Court at said term, according to law.

No. 11. MOTION TO DISMISS.

JUDGMENT FOR PLAINTIFF.

The defendant appears by A. B., his attorney, and files a motion to dismiss this action, because, he says, &c.; and upon the said motion, after hearing all matters and things concerning the same, it appears to me, the said justice,* that this action should not be dismissed.

No. 12.

JUDGMENT FOR DEFENDANT.

[As before to*.] That this action should be dismissed. It is therefore considered by me, the said justice, that this action be dismissed, and that the said W. F. B. and N. F. recover, &c.

No. 13. AMENDMENT.

The plaintiff, by leave of court, amended his writ by adding a new count, as follows, to wit, &c., as by motion on file appears.

No. 14. SET-OFF.

The defendant files his account against the plaintiff in set-off, as by set-off on file more fully appears.

No. 15. RECORD IN CASE OF TRUSTEE WHEN CHARGED.

And the said J. G. came into court and submitted himself to an examination on oath, as by the interrogatories on file appear. Whereupon he was adjudged to be a trustee of said defendant.

(If judgment be given for the plaintiff in the suit, add.)

It is therefore considered by me, the said justice, that said B. S. F. recover, &c., and execution is awarded therefor against the goods, effects and credits of said defendant, in the hands of said trustee, as well as against the body and goods of said defendant.

No. 16. TRUSTEE DISCHARGED.

Whereupon it was adjudged that he is not a trustee of said defendant, and it is considered by me, the said justice, that the said J. G. recover of the said B. S. F. his costs taxed, &c.

No. 17. CONTINUANCE.

And said action is continued to, &c.

No. 18. DISCONTINUANCE AS TO ONE DEFENDANT.

And the plaintiff discontinues his case so far as relates to the said N. F.

No. 19. NOTICE TO ABSENT DEFENDANT.

It appearing that the defendant in this case was without the State, so that no service of the writ in this action could be made on him, and that he had no agent or attorney residing in the State, it is ordered that notice be given, &c.

No. 20. DEATH OF PARTY SUGGESTED.

It is suggested that the defendant hath deceased, and said action is continued, &c. that the plaintiff may summon in his administrator to defend.

No. 21. ADMINISTRATOR COMES IN.

And now, on this, &c. A. B., administrator of the estate of said deceased, comes in and takes upon himself the trial of said suit.

No. 22. ON A TRIAL.

In a plea of the case for the said F., [here insert the declaration.] This action was then and there entered before me, the said justice, and now the plaintiff appears by R. S., Esquire, his attorney, and the said F. comes and defends, &c., and for plea says, he never promised in manner and form as the plaintiff in his declaration has alleged, and thereof puts himself upon the said justice for trial, by T. W., his attorney.
and the plaintiff likewise, by R. S., his attorney.

Upon which issue, after hearing all matters and things concerning the same, it appears to me, the said justice, that the defendant promised [or never promised] in manner and form as the plaintiff in his declaration has alleged. It is therefore considered, &c.

A. B., Trial Justice.

No. 23. JUDGMENT AGAINST EXECUTOR, WHO APPEARS.

And execution is awarded for the said amount of debt or damage against the goods and estate of the said W. F. B. in the hands of the said A. B. as his executor. Execution is also awarded for the amount of the said costs against the proper goods and estate of the said A. B., and, for want thereof, against his body.

No. 24. PROFERT.

The defendant now brings into court, and tenders to the plaintiff, the sum of — in full satisfaction of the cause of action declared on in the writ in this action, and prays that the cause of suit may be taxed as appears by the tender on file in the case. And said sum is accepted by the plaintiff, but only in part satisfaction.

No. 25. ON AN APPEAL.

From this judgment the said C. [or F.] appeals to the Supreme Judicial Court next to be held at W., within and for the said county of L., on the — Tuesday of — next, and he recognizes as the law directs, to prosecute said appeal with effect.

Attest:

A. B., Trial Justice.

No. 26. ON COMPLAINT OF DEFENDANT.

At a court held, &c. T. P. of, &c. complains and fully shows to me that he was summoned to appear before me this day at — o'clock in the — noon to answer to G. R. of, &c. in a plea of — and that the said R. hath failed to enter his action, and therefore prays that he may be allowed his costs against him. It is therefore adjudged by me, that the said T. P. recover against the said R. his costs taxed at —

J. D., Trial Justice.

No. 27. RECOGNIZANCE FOR PROSECUTING AN APPEAL.

STATE OF MAINE.

P—, ss. Be it remembered, that on the — day of — in the year of our Lord one thousand eight hundred and — before me, A. B., Esquire, one of the trial justices within and for said county, at my dwellinghouse in E. in said county, personally appeared F. G. of said E., [addition] as principal, and L. R., [addition] and S. W., [addition] both of said E., as sureties, and acknowledged themselves to be severally indebted to C. D. of said E., [addition] in the sum of — dollars, to be levied upon their goods or chattels, lands or tenements, and in want thereof upon their bodies, to the use of the said C. D., if default be made in the performance of the condition following.

The condition of this recognizance is such, that whereas the said C. D. has

this day recovered judgment against the said F. G., in an action or plea of the case: for that [here insert the declaration] to the damage of the said C. D., (as he saith) the sum of twenty dollars; and the said F. G. having pleaded that [here insert the plea] whereupon it was considered by me that the said C. D. recover of the said F. G. the sum of — dollars and — cents damage, and costs of suit taxed at — dollars and — cents, and the said F. G. having claimed an appeal from said judgment to the Supreme Judicial Court next to be holden at B., within and for the county of P., on the — Tuesday of — A. D. 187—; now therefore if the said F. G. shall prosecute his said appeal with effect, and shall pay all costs arising after the appeal, then this recognizance shall be void, otherwise remain in full force and virtue.

Attest:

A. B., Trial Justice.

By the R. S. Ch. 116, § 10, a party, appealing from the judgment of a justice of the peace, is required to recognize, “with condition to prosecute his appeal with effect, and pay all costs arising after the appeal.” *French v. Snell*, 37 Me. page 100.

When the magistrate required as a condition of the appeal, that the party should “personally appear” at the appellate court, and pay “all intervening damages and costs,” such recognizance was unauthorized, and the appeal void. *French v. Snell*, 37 Me., page 100.

The original recognizance taken before a magistrate on an appeal from his judgment, must be returned to the appellate court. *Stetson v. Corinna*, 44 Me., page 29.

When no recognizance was returned when the appeal was entered, it was received and filed by leave of court, after a motion to dismiss for want of a recognizance. *Stetson v. Corinna*, 44 Me. page 29.

A recognizance (under R. S. of 1841,) conditioned “to pay all intervening damages and costs,” entered into to prosecute an appeal from a justice of the peace, is unauthorized and void, and furnishes no security to the adverse party for costs; and this court, will, on motion, dismiss the appeal. *Jordan v. McKenny*, 45 Me. page 306.

In an appeal from a judgment of a justice of the peace, the appellant should recognize to prosecute, even if the opposite party waive his right to sureties. *Bennett v. Green*, 46 Me. page 449.

NO. 28. SUBPŒNA FOR WITNESSES.

[L. s.] K—, ss. To L. M., N. O., P. Q.

Greeting.

You are hereby required in the name of the state of Maine, to make your appearance before R. S., one of the trial justices within and for said county, at his office in P., on the second day of August, 18—, at ten o'clock in the

forenoon, to give evidence of what you know relating to an action or plea of trespass, then and there to be heard and tried betwixt A. B., plaintiff, and C. D. and E. F. defendants. Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided Dated at W. the — day of —, in the year of our Lord one thousand eight hundred and —.

G. H., Trial Justice.

No. 29. JUDGMENT AND APPEAL IN FORCIBLE ENTRY.

And upon the issue, &c., it appears, &c., that the said W. F. B. is guilty, &c., and that the plaintiff is entitled to possession of the premises demanded in said writ. It is therefore considered by me, the said justice, that the said B. S. F. recover possession of said premises, and also his costs, &c., against the said W. F. B. From which said judgment, &c.

[If future rent be claimed, a statement may be put in at this stage of the case, unless claimed in the writ, which may be thus recorded.]

And thereupon the said B. S. F. makes a claim in writing, which is filed in the case, and is of the tenor following, &c.

Whereupon it is considered, &c., [setting forth the proper recognizance in such case.]

No. 30. REPLEVIN OF BEASTS; JUDGMENT FOR RETURN.

And upon the issue, &c., it appears to me, &c. that the said beasts were lawfully taken and distrained.

It is therefore considered by me, the said justice, that the same beasts be returned and restored to the said W. E. B. to be held by him, irrepleviable by the plaintiff, and that the said W. F. B. recover, &c.

No. 31. SCIRE FACIAS.

In an action of scire facias, wherein the said B. S. F. sets forth, &c. [setting forth the writ] as appears more fully by the writ on file. And the plaintiff appears and enters his action. And the defendant appears by A. B., his attorney, and for plea, saith, &c. And the plaintiff doth likewise by his said attorney. [Hearing and judgment as before, according to the facts.]

No. 32. COMPLAINT IN FORCIBLE ENTRY AND DETAINER.

STATE OF MAINE.

O—, ss. To A. B., a trial justice within and for said county of O—. [L. s.] (R. S. ch. 94.)

C. D. of &c., complains against E. F. of &c., in said county, that E. F. on the — day of — A. D. 187—, having before that time had lawful and peaceable entry into the lands and tenements of the complainant, situated in —, [here insert a particular description of the premises claimed] and whose estate in the premises was determined on the — day of — A. D. 187—, then did and still does unlawfully refuse to quit the same; although the complainant avers, that he gave notice in writing to the said E. F. thirty days before the said — day of — aforesaid, to terminate his estate in the premises.

Done at — aforesaid, this — day of —, in the year of our Lord, one thousand eight hundred and —. C. D.

On the — day of — aforesaid, the said C. D. makes oath that the above complaint, by him signed, is true.

Before me,

A. B., Trial Justice.

No. 33. FORM OF WARRANT UPON THE ABOVE.

STATE OF MAINE.

[L. s.] O—, ss. To the sheriff, &c.

Greeting.

In the name of said State, you are commanded to summon the said E. F. if he may be found in your precinct, to appear before me at —, in said —, on the — day of —, A. D. 187—, at — o'clock in the —noon, and show cause, if any he have, why judgment should not be rendered, and a writ of possession should not issue against him for the possession of the lands and tenements described in the foregoing complaint of C. D. which is expressly referred to as part of this writ, and for costs of suit. And have you there this writ, with your doings therein.

Witness A. B., trial justice within and for said county, at — aforesaid, this — day of — in the year eighteen hundred and seventy —.

A. B., Trial Justice.

No. 34. WRIT OF REPLEVIN FOR LIBERATION OF CATTLE IMPOUNDED.

STATE OF MAINE.

O—, ss. To the sheriff of our county of O., or his deputy, or to either [L. s.] of the constables of the town of B. in the said county.

Greeting.

We command you that you replevy [here insert a description of the beast or beasts impounded] belonging to P. D. of B. [addition] now distrained or impounded by S. P. of B. [addition] in the common pound in said B. [or in such other place as they may be restrained] and them deliver unto the said P. D.; provided the same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said P. D.; and summon the said S. P. to appear before J. S., one of our trial justices for our said county of O., at his dwellinghouse in B., on the — day of — at — of the clock in the —noon, to answer unto the said P. D. in a plea of replevin, for that the said S. P. on the — day of — at a place called A. in B. aforesaid, unlawfully took and impounded the said — and the same has unjustly detained to this day, to the damage of the said P. D., as he saith, the sum of — dollars, as shall then and there appear, with other due damages; provided he, the said P. D., shall give bond, with sufficient surety or sureties, to the said S. P., in the sum of — dollars, being double the value of the said beasts, to prosecute his said replevin to final judgment, and to pay such damages and costs as the said S. P. shall recover against him, and also to return the said — in case such shall be the final judgment. And of this writ, with your doings hereon, and the bond you shall take, you are to make return to our said justice, on or before the said — day of — at — o'clock. Witness J. S., our said justice, at B. in the said county, this — day of —, A. D. 187—.

J. S., Trial Justice.

No. 35. FORM OF WRIT OF REPLEVIN FOR GOODS, &c.

STATE OF MAINE.

O—, ss. To the sheriff of our county of O— or his deputy, or to any constable in any town of said county.

Greeting.

[L. s.] We command you that you replevin the goods and chattels following, viz: [here insert the articles] belonging to A. B., of —, now taken and detained by E. D., of —, and them deliver unto the said A. B., provided the same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said A. B., and summon the said E. D., that he appear before me, J. P., Esquire, a trial justice, within and for said county, at my dwelling house in —, on the — day of —, 187—, at — o'clock, in the —noon, to answer unto the said A.

B. in a plea of replevin, for that the said E. D., on the — day of —, at said — unlawfully and without any justifiable cause, took the goods and chattels of the said A. B., as aforesaid, and them unlawfully detained to this day, to the damage of the said A. B., as he says, the sum of — dollars.

Provided he, the said A. B., shall give bond to the said E. D., with sufficient sureties, in the sum of — dollars, being twice the value of said goods and chattels, to prosecute the said replevin to final judgment, and to pay such damages and costs as the said E. D. shall recover against him, and also to return and restore the same goods and chattels, in like good order and condition as when taken, in case such shall be the final judgment; and have you there this writ, with your doings therein, and the bond you shall take.

Witness, J. P., Esquire, our said justice, at —, the — day of —, 187—.

J. P., Trial Justice.

No. 36. FORM OF BOND.

Know all men by these presents, that we, A. B., of &c., as principal, and O. P. and S. T., both of &c., as sureties, are held and stand firmly bound unto E. D., of &c., in the sum of — dollars; to be paid to the said E. D., to the payment of which we jointly and severally bind ourselves and our heirs firmly by these presents.

Witness our hands and seals. Dated this — day of —, A. D. 187—.

The condition of this obligation is such that whereas the above bounden A. B., on the — day of —, sued out before J. P., a trial justice for said county of O., a writ of replevin against the said E. D., in due form of law, returnable on the — day of —, at — o'clock, in the — noon.

Now if the above bounden A. B. shall prosecute his said action of replevin to final judgment, and shall pay all such costs and damages as the said E. D. shall recover against him, and shall also return the — replevied in like good order and condition as when taken, in case such shall be the final judgment; then this obligation to be void and of none effect, otherwise to remain in full force and virtue.

Signed, sealed and delivered
in presence of
W. X.

A. B. [L. s.]
O. P. [L. s.]
S. T. [L. s.]

No. 37. EXECUTION FOR DEFENDANT WHEN BEASTS ARE REPLEVIED. WRIT OF RETURN.

[L. s.] O—, ss. To the sheriff of our county of O— or his deputy,
Greeting.

Whereas A. B., of &c., lately replevied the beasts following [here describe as in the writ of replevin] which E. D., of &c., had unlawfully taken and unjustly detained, as the said A. B. suggested and caused the said E. D. to be summoned before I. P., one of our trial justices for our said county, to answer unto the said A. B. for such supposed and unlawful taking and detaining at a day now passed; and whereas upon the — day of —, at — aforesaid, upon a hearing of the cause of taking and detaining said beasts, before our said justice, it appeared that the same taking and detaining was lawful and justifiable; (whereupon it was then and there considered, that the same beasts be returned and restored to the said E. D. irrepleviable, and that the said E. D. recover against the said A. B. the sum of — dollars damages, for his taking the same, by the said process of replevin, and the further sum of — for his costs, arisen in the defense of the said suit, as by the record of our said justice, before him remaining appears, whereof execution remains to be done. We command you therefore that you forthwith return and restore the said beasts unto the said E. D.) We command you, farther, that of the money of the said A. B., or of his goods or chattels within your precinct, at the value thereof in money, you cause to be levied,

paid, and satisfied to the said creditor the aforesaid sums, being — dollars and — cents, in the whole; with — cents more for this writ, together with your own fees. And for want of such money, goods, or chattels of the said debtor to be by him shown unto you, or found within your precinct, to the acceptance of the said creditor, for satisfying the aforesaid sums, we command you to take the body of the said debtor, and him commit into our jail, in —, in the said county of —, and we command the keeper thereof accordingly to receive the said debtor into our jail, and him safely keep, until he pay the sums above mentioned, with your fees, or that he be discharged by said crediior or otherwise by order of law.

Hereof fail not, and make return of this writ, with your doings therein, unto our said justice, within three months next coming.

Witness our said justice, at —, the — day of —, in the year of our Lord one thousand eight hundred and seventy —.

J. P., Trial Justice.

No. 39. FORM OF EXECUTION FOR DAMAGES INSTEAD OF RETURN.

Instead of the clause in parenthesis insert as follows :

“Whereupon it was then and there considered by me, the said justice, that the said E. D. should recover against the said A. B. the sum of —, being the amount due for the penalty or forfeiture of said beasts, and the further sum of —, being the legal fees, costs, charges, and expenses, incurred by reason of said distress, and — for charges of suit, as to us appears of record, whereof execution remains to be done.

No. 40. FORM OF TRUSTEE WRIT.

STATE OF MAINE.

[L. s.] O—, ss. To the sheriff of our said county of O—, or his deputy, or to the constable of the town of —, within said county, Greeting.

We command you to attach the goods and estate of D. F., of N., in the county of O—, Esquire, to the value of twenty dollars; and summon the said D. F. (if he may be found in your precinct), to appear before me, L. A. Esq. one of the trial justices in and for the county of O—, at my dwelling house in N—, in said county, on —, the — day of —, 187—, at —, of the clock in the —noon, then and there to answer unto P. L., of &c.

In the plea of the case, for that, &c. Yet though often thereto requested, said D. F. has never paid said sum to the plaintiff, but neglects and refuses so to do. To the damage of said plaintiff (as he says), the sum of twenty dollars, which shall then and there be made to appear, with other due damages.

And whereas the said plaintiff says that the said D. F. has not in his own hands and possession, goods and estate to the value of twenty dollars aforesaid, which can be come at to be attached, but has intrusted to and deposited in the hands and possession of T. R., of —, in the county of O—, trustee of said D. F., goods, effects, and credit to the said value: we command you, therefore, that you summon the said T. R. (if he may be found in your precinct), to appear before me, the said justice, at the time and place aforesaid, to show cause (if any he has) why execution to be issued upon such judgment as the plaintiff may recover against the said D. F., in this action (if any), should not issue against his goods, effects, or credits in the hands and possession of him the said T. R. And have you there this writ with your doings therein.

Dated at N—, aforesaid, this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

L. A., Trial Justice.

No. 41. PLEA OF TRUSTEE.

Before L. A., a trial justice for the county of O—, at N—, in said county, ———, 187—.

P. L. v. D. D., defendant, and T. R., trustee of said D. F.

And now the said T. R. comes and defends, &c., when, &c., and says that he ought not to be adjudged trustee of the said defendant, in this action, because he says, that at the time of the service of the writ in this action upon him, to wit: on the ——— day of ———, A. D., 187—, he had not in his hands and possession any goods, effects, or credits of the said defendant. And this he is ready to verify; and therefore submits himself to an examination on oath. Wherefore he prays judgment for his costs.

By E. S. M., his Att'y.

INTERROGATORIES.

1. Had you at the time of the service of this writ any goods, effects, or credits, of the said D. F. in your hands or possession?

Answer.—I had not, (unless I shall be adjudged chargeable under the following circumstances, &c.) T. R.

No. 42. FORM OF CERTIFICATE OF OATH.

O—, ss. ———, 187—.

Personally appeared T. R., and made oath that the above disclosure by him subscribed is true.

Before me,

L. A., Justice of the Peace,

No. 43. APPLICATION BY A TRUSTEE TO A JUSTICE TO TAKE A DISCLOSURE.

To J. P. a justice of the peace and quorum for the county of O—.

T. R., of ———, shows that an action commenced by P. L., against D. F., is now pending in the Supreme Judicial Court for the county of O— (or before L. A. justice of the peace for said county), and that he, the said T. R., is summoned as trustee of said D. F., that he is about to depart from the State, (or go on a voyage), not to return before the term of the court where he is summoned to appear, (or before said action is returnable before L. A., Justice as aforesaid), that he is desirous that his disclosure may be taken; wherefore he prays that due notice may be given the plaintiff aforesaid, and that his disclosure may be taken before you, at such time and place as you may appoint. T. R.

No. 44. ORDER OF THE JUSTICE.

Upon the foregoing application, it is ordered, that the disclosure of T. R. be taken before me, the said Justice, at ——— in ——— in said county, on ——— at ——— o'clock in the ——— noon; and that said T. R. give notice of the said time and place of taking said disclosure, by giving in hand to, or leaving at the place of the last and usual abode of P. L. aforesaid, an attested copy of said application with this order thereon, ——— days at least before the time appointed as aforesaid.

J. P., Justice of the Peace and Quorum.

No. 46. CERTIFICATE OF JUSTICE OF DISCLOSURE.

O—, ss. ———, 187—.

I certify that the above disclosure was taken before me, J. P., a justice of the peace and quorum for the county of O—, upon the application of said trustee, who is about to leave the State and not return until after the term of the court where he was summoned to appear; and that notice was given to the said P. L., and he was (or was not) present at the time and place of taking the disclosure.

J. P., Justice of the Peace and Quorum.

No. 47. FORM OF TRUSTEE EXECUTION.

STATE OF MAINE.

O—, ss. To the sheriff of the said county of O—, or either of his deputies, [L. s.] ties, or the constables of the town of N—, within our said county, Greeting.

Whereas, P. L., of &c., on the — day of —, before L. A., Esquire, one of the trial justices for the county aforesaid, recovered judgment against —, for the sum of — dollars and — cents, debt or damages, and — dollars and — cents, for charges of suit, as to us appears of record, whereof execution remains to be done; and whereas by the consideration of the said justice, execution was likewise awarded for the same sums against the goods, effects, and credits of the said D. F. in the hands and possession of T. R., of — in said county, husbandman, trustee of the said debtor as to us appears of record, whereof execution remains to be done:

We command you, therefore, that of the money of the said debtor, or of his goods or chattels in his own hands or possession, and of the goods, effects, and credits of the said debtor in: he hands and possession of said T. R., at the value thereof in money, you cause to be levied, paid, and satisfied to the said creditor the aforesaid sums, being — dollars and — cents, in the whole; and also that out of the money, goods, or chattels of the said debtor, you levy — cents more for this — writ, together with your own fees. And for want of such money, goods, or chattels of the said debtor, to be by him shown unto you, or found within your precinct, to the acceptance of the said creditor, and for want of goods, effects, and credits of the said debtor in the hands and possession of said trustee, to be by him delivered to you to satisfy the aforesaid sums together with the interest on the debt or damage from the time of the rendition of judgment, we command you to take the body of the said debtor, and him commit unto our jail in said A., in said county of O., and we command the keeper thereof accordingly to receive the said debtor into our jail, and him safely keep, until he pays the sums above mentioned, with your fees, or that he be discharged by said creditor, or otherwise by order of law.

Hereof fail not, and make due return of this writ, with your doings therein, unto our said Justice, within three months next coming. Witness our said Justice, at —, the — day of —, in the year of our Lord one thousand eight hundred and seventy —.

L. A., Trial Justice.

PROCEEDINGS BEFORE PLEADINGS.

No. 48. COMPLAINT FOR NOT ENTERING ACTION.

To L. A., a trial justice for the county of —.

Complains D. F., of — in said county, husbandman, that his goods and estate were attached, and he was summoned to appear before you, at — office in P., in said county this day, at — o'clock in the — noon, to answer to P. L., of —, in said county, yeoman, in a plea of —. And the said P. L. has neglected to enter his said action, whereof said D. F. prays judgment for his costs.

Dated the — day of —, 187—.

D. F., by his attorney,
S. T.

No. 49. NOTICE TO ABSENT DEFENDANT.

STATE OF MAINE.

O—, ss. At a justice's court holden at W—, before J. C., one of the justices &c., at —, — day of —, A. D. 187—,
E. W. et al. Plaintiffs v. W. O., Defendant.

In a plea of [here set forth the declaration] as appears by the writ in this action. And now it appearing to said justice that said defendant at the time of the service of this writ was not an inhabitant of this State, and had no agent or attorney within the same; ordered that notice be given to said defendant to appear at a justice's court to be holden, &c., or his default will be recorded, and judgment thereof rendered against him, and that said notice be given by forwarding to said defendant by mail at C—, in the State of N. H., an attested copy of this order ——— days at least before the day of said court.

J. C., Trial Justice.

No. 50. MOTION TO DISMISS.

O—, ss. At a justice's court, &c.,

A. B. v. C. D.

And now the defendant comes and moves to dismiss said action, because he says, [insert the cause.]

By his attorney, &c.

No. 51. MOTION TO AMEND.

O—, ss. At a justice's court, &c.,

And now the plaintiff comes and moves to amend his writ by inserting, &c., or by striking out, &c.

No. 52. LOSS OF WRIT.

Affidavit of Attorney.

O—, ss. At a justice's court, &c.,

A. B. v. C. D.

I, J. S., of, &c., an attorney and counsellor at law, do depose and say, that I believe, and have no doubt, that the instrument hereunto annexed, marked *A*, is a true and exact copy of the original writ in the above action. Said writ was made by me, and this copy has been made from the minutes in my docket, made at the time it was sued out, which are full and distinct. And I do further say, that said original writ has been lost without fault or design on my part.

Sworn to before me,

J. D. Trial Justice.

Affidavit of Officer.

I, E. E., of, &c., a deputy sheriff, &c., do depose and say, that I believe and have no doubt that the return, marked *B*, on the annexed instrument, to be a true and exact copy of the return of the original writ in this action. It is made out and completed from my minutes, made at the time of the original service.

Sworn to before me,

E. E., Deputy Sheriff.
J. D. Justice of the Peace.

No. 54. OFFER TO BE DEFAULTED.

O—, ss. At a justice court, &c.

A. B. vs. C. D.

And the said C. D., this ——— day of ———, offers and consents to be defaulted, and that judgment be entered against him for a specified sum as damages, to wit, for the sum of ——— dollars; and prays that this offer may be entered on record, and the time when the same is made. C. D.

No. 55. MOTION FOR LEAVE TO PAY MONEY INTO COURT.

O—, ss. At a justice court, &c.

A. B. vs. C. D.

And now the said C. D., by his attorney, moves for leave to bring in the sum of ——— dollars, and that unless the plaintiff accept the same, in full discharge of the damages claimed against him, the said C. D., the sum so brought in may be paid out of court to the plaintiff or his attorney, and the

amount thereof be stricken out of the declaration, and no evidence thereof be given at the trial; and that if the plaintiff shall elect to receive said sum, in full discharge of the damages claimed by him, he may be ordered to tax his costs, that the defendant may pay the same.

E. F., defendant's att'y.

No. 56. PLEA OF ABATEMENT IN ASSUMPSIT.

O—, ss. At a justice court, &c.

A. B. vs. C. D.

And the said C. D. prays judgment of the said writ and declaration, because he says that the said several supposed promises in the said declaration mentioned, if any such were made, were, and each of them was made jointly with one G. H., who is still living, and residing at —, and not by the said C. D. alone; wherefore, inasmuch as the said G. H. is not named in the said writ or declaration, together with the said C. D., he, the said C. D., prays judgment of the said writ and declaration, and that the same may be quashed. By his attorney, E. F.

No. 57. GENERAL DEMURRER TO DECLARATION.

O—, ss. At a justice court, &c.

A. B. v. C. D.

And now the said C. D. says, that the said declaration of the plaintiff is not sufficient in law, and therefore prays judgment, and for his costs.

By his attorney,

E. F.

No. 58. SUMMONS TO ADMINISTRATOR OF PLAINTIFF, TO COME IN AND PROSECUTE.

O—, ss. To the sheriff of our county of O—, or his deputy, or to either of [L. s.] the constables of the town of W—, in said county, Greeting.

In the name of the State of Maine, you are commanded to summon C. B., of W—, in said county, gentleman, as he is administrator of the estate of C. S., late of said W., deceased, (if he may be found in your precinct,) to appear before me, J. S., a trial justice in and for said county, at a justice court to be holden, &c.,* to prosecute a suit commenced by the said C. S. in his lifetime against one C. N., of W—, aforesaid, painter, which is now pending before me as such justice, wherein the said plaintiff declares as follows, to wit: In a plea, &c., [setting forth the declaration,] to the damage of the said plaintiff, as he therein says, the sum of twenty dollars. Hereof fail not, &c.

Dated, &c.

J. S., Trial Justice.

No. 59. SUMMONS TO ADMINISTRATOR OF DEFENDANT TO COME IN AND DEFEND.

Same as last to *. Continue as follows:

Then and there to answer unto C. S., of, &c., and to take upon himself as such administrator, the defence of an action now pending before me, wherein the said C. S. is plaintiff, and the said C. N. is defendant, commenced in the lifetime of the said defendant, and wherein the said plaintiff declares as follows, to wit, "In a plea, &c."

To the damage, &c. [As before.]

In case of insanity and marriage, vary the above forms.

No. 60. MOTION OF THE HUSBAND TO BE JOINED IN CASE OF MARRIAGE OF FEME SOLE PLAINTIFF.

O—, ss. At a justice court, &c.

A. B. v. C. D.

And now J. N. comes and shows that since the commencement of this ac-

tion, the plaintiff hath intermarried with him, and is now his lawful wife, and prays to be allowed to be joined with her, and prosecute this suit to final judgment. J. N.

No. 61. CAPIAS FOR WITNESS.

STATE OF MAINE.

O—, ss. To the sheriff, &c., or to any constable, &c.

[L. s.] Whereas an action is now pending and on trial before me, A. B., a trial justice, &c., wherein C. D. is plaintiff and E. F. is defendant; and it has been made to appear to me, the said justice, that G. H. of, &c. has been duly summoned to appear before me as a witness in said suit in behalf of said C. D., and has been tendered [or paid] his legal fees therefor; and the said C. D. hath not so appeared, and hath thereby committed a contempt of this court; you are hereby commanded to take the body of the said C. D. (if he may be found in your precinct) and bring him forthwith before me, the said justice, to answer to the said charge of contempt, and also to give evidence of what he knows relative to the plea in said suit.

Hereof fail not, and make due return, &c.

Given, &c.

A. B., Trial Justice.

No. 62. PLEA OF GENERAL ISSUE IN ASSUMPSIT.

O—, ss. At a justice court, &c.

A. B. vs. C. D.

And the said C. D., by his attorney, ———, comes and defends the wrong and injury, when, &c., where, &c. and saith that he never promised in manner and form as the said A. B. has in his declaration alleged against him, and of this he puts himself upon trial.

By ———, Defendant's Attorney.

And the plaintiff does the like.

By ———, Plaintiff's Attorney.

For forms of oaths of witnesses see Ch. 75, §§ 15, 16.

APPEAL PAPERS IN CIVIL CASES.

In making up appeal papers the justice should copy the whole process, in the following order, viz. :

1, Writ ; 2, Officer's return ; 3, Record ; 4, Bill of costs, and all papers filed in the cause (except depositions or other written evidence or documents, the originals of which should be produced), each of which should be certified as follows.

A true copy of record.

Attest :

A. B., Trial Justice.

The above papers, are to be delivered to the appellant when called for by him, on payment of fees for copies.

The justice should make up the recognizances of the appellant and certify it as follows :

Attest :

A. B., Trial Justice.

The justice should return the recognizance to the appellate court soon after taken, to be filed by the clerk of said court.

APPENDIX.

CHAPTER LXXVII.

MISCELLANEOUS FORMS.

1. *Depositions. Form of summons to deponent.*

— ss. To C. D., of —, in the county of —, Greeting.
Whereas, A. B., of —, in the county of —, has requested me to take your deposition, to be used in an action now pending between him and E. F., of —, in the county of —, and the —, of —, in the town of —, and the — day of —, at — of the clock, in the —noon, are the time and place appointed for taking the same deposition; you are therefore required, in the name of the state of —, then and there to appear, to testify what you know relating to said action.

Dated this — day of —, A. D. 18—.

— —, Justice of the Peace.

2. *Notice to adverse party.*

[L. s.] O—, ss. To — of —, in the county of —,

Greeting.

Whereas A. B., of —, in the county of —, has requested me, the undersigned justice, to take the deposition of C. D., of —, in the county of —, to be used in an action of — pending between you and the said A. B., and the — of — in — and the — day of — in the year of our Lord one thousand eight hundred and seventy —, at — of the clock in the —noon, are appointed the time and place for the said deponent to testify what he knows relating to the said action. You are hereby notified, that you may then and there be present, and put such interrogatories as you may think fit.

Given under my hand at —, on the — day of —, in the year of our Lord one thousand eight hundred and seventy —.

— —, Justice of the Peace.

3. *Notice to adverse party to take a deposition out of the State.*

STATE OF MAINE.

[L. s.] O—, ss. To A. B., of —, in our said county of O—.

Greeting.

Whereas L. A. of —, in our said county of O—, has requested that the deposition of A. F., of —, in the county of —, state of —,

may be taken by same justice of the peace, within and for said county of —, to be used in an action of assumpsit, pending between you, and the said L. A., in the Supreme Judicial Court, in said county of O—, and the office of said A. F., in said town of —, on —, the — day of — in the year of our Lord one thousand eight hundred and seventy —, at — o'clock in the —noon, are the time and place appointed for the said A. F. to testify what he knows relating to the said action. You are hereby notified that you may be present and put such questions as you may think fit.

Given under my hand and seal this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

— —, } Justice of the Peace,
within and for said county of O—.

4. *Caption for deposition.*

STATE OF MAINE.

— county, ss :

On this — day of — A. D. 18—, the within named deponent personally appeared before me, at —, in said county, was first sworn by me, according to law, to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which his within deposition was to be taken; and then being examined on interrogatories, according to law, gave on oath the within deposition, which was written by me, the undersigned, (or by the deponent, or C. D., a disinterested person, in the presence and under the direction of myself;) and after the same deposition had been carefully read — said deponent, it was then subscribed by him in my presence.

Said deposition was taken at the request of the —; the adverse party was notified to attend and did — attend its taking; the cause in which it is to be used is an action of — in which —, plaintiff, and —, defendant, which is now pending in the — court, within and for the county of —, in this state, and is to be tried in said court at its term to be holden at —, within and for said county of —, on the — day of — A. D. 18—.

The cause of taking said deposition is that said deponent resides in a town other than that in which the trial is to be had; (or, being so aged, infirm, or sick, as not to be able to attend at the place of trial, or residing out of the state, or being bound to sea on a voyage, or being about to go out of the state, before the session of the court and not to return in season to attend the trial, or living more than sixty miles from the place of trial, or being confined in prison, or is judge of the Supreme Judicial Court, or Court of Probate.)

And the fees for it as below stated.

Witness my hand at said —, the day and year first above-named.

FEES.—Magistrate's, \$

Deponent's,

For service of notifications,

— —, } Justice of the Peace
for said county
of O—.

5. *Direction on envelope enclosing deposition.*

To the honorable the justice of the — court, next to be holden at —, within and for the county of —, on the — day of —, next,

The deposition of —, to be used in case of A. B. vs. C. D., now pending in said court.

Taken and sealed up by me.

— —, Justice of the Peace.

The deponent must be sworn before giving his deposition.

6. *Form of oath to deponent.*

You solemnly swear, that the testimony you shall give relative to the cause for which your deposition shall be taken, shall be the truth, the whole truth, and nothing but the truth. So help you God.

7. *Commencement of depositions.*

I, A. B., of ———, in the county of ———, of lawful age, do testify, depose, and say (if the interrogatories are written) in answer to the following interrogatories:

1. Question by W. B., plaintiff's attorney. (Here the party will write the question if he chooses, or the justice will write the question and answer.)

2. Ques. by same, &c.

DEPOSITIONS IN PERPETUAM.

When any person wishes to perpetuate the testimony of a witness, he shall make a statement in writing under oath, briefly setting forth in substance his title, interest, or claim in the subject to which the desired testimony relates, and the names of all persons supposed to be interested therein, and the name of each witness proposed to be examined; and shall deliver the statement to a judge or register of probate, notary public, clerk of the supreme judicial court, or justice of the peace and quorum, requesting him to take the deposition of such witness; and he shall thereupon cause notice to be given, of the time and place for taking such deposition, to all persons so named in the statement, which may be given and proved as in case of other depositions. R. S. Ch. 107, § 22.

The deponent shall be sworn and examined, and the deposition written, read, and subscribed, as other depositions; and the person taking it shall annex to it a like certificate, as near as the case will admit, and also state therein that it was taken in perpetual remembrance of the thing, and the name of the person at whose request it was taken, and of all who were notified, and all who attended. Ib. § 24.

The statement, deposition, and certificate, within ninety days after the taking, shall be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or some of them reside. Ib. § 24.

8. *Form of statement.*

To A. B., justice of the peace and quorum for the county of —.

C. D., of —, in the county of —, and state of —, respectfully makes the following statement, to wit: [here set forth in substance, his title, interest, or claim, in or to the subject to which the desired testimony relates, and the names of all persons who are supposed interested therein; and also the name of each witness proper to be examined;] whereof he prays that notice shall be given to said —, —, —, persons named as aforesaid, that the depositions of said —, —, —, may be taken before you, in relation to the premises, to be preserved in perpetual remembrance.

C. D.

—, ss. June —, 187—. Personally appeared C. D., and made oath that he believes the foregoing statement to be true.

Before me, — —, Justice of the Peace.

9. *Form of notice.*

—, ss. To —, of —, in the county of —,

Greeting.

You are hereby notified that the deposition of — will be taken before A. B., justice of the peace and quorum, (or a notary public) for the county of —, relative to [here state the matter to which the deposition relates;] to be preserved in perpetual remembrance of the thing —; and the office of —, in —, and the — day of —, at — o'clock in the —noon, are appointed as the time and place for said deponent to testify what he knows relating to the said matter.

Given under my hand (and seal) this — day of —, 18—.

A. B., Justice of the Peace and Quorum.

NOTE. There should be a return and affidavit of service of notice.

10. *Form of certificate annexed to deposition.*

—, ss. —, 187—. I certify that the annexed deposition was taken by me, A. B., justice of the peace and quorum for said county of —, at my office in —, in said county, on the — day of —, 18—, at — o'clock in the —noon, at the request of —, to be preserved in perpetual remembrance. And I duly notified — —, who were present, [or not, as the case may be.] Said deposition was reduced to writing by me, was read to and subscribed by the deponent in my presence, the said deponent having first made oath that he would testify to the truth, the whole truth, and nothing but the truth, relative to the matters for which his said deposition was to be taken.

A. B., Justice of the Peace and Quorum.

11. *Form of a submission before a Justice of the Peace.*

Know all men by these presents, that we, A. B., of —, in the county of —, and C. D., of —, in the county of —, have agreed to submit the demand made by the said —, against the said —, which is hereunto annexed, [“and all other demands against the parties,” as the case may be,] to the determination of —, the report of whom [or the major part of whom] being made within one year from this day to the Supreme Judicial Court for the said county of —, the judgment thereon shall be final. And if either of the parties shall neglect to appear before the referees, after proper notice given to them of the time and place appointed by the referees for hearing the parties, the referees may proceed in his absence.

Dated this — day of —, A. D. 18—.

A. B.
C. D.

12. *Acknowledgment.*

C—, ss. June —, 18—. Then personally appeared the above-named A. B. and C. D., and acknowledged the foregoing instrument, by them subscribed, to be their free act.

— —, Justice of the Peace.

13. *Form of demand annexed.*

A. B., of —, demands against C. D., of —, the sum of forty-five dollars, being the price of one yoke of oxen, sold and delivered by said A. B. to said C. D. [Or the amount of the account hereto written.]

14. *Notice by chairman of referees.*

To A. B., of —.

I have appointed the — day of —, at — o'clock in the —, at the dwelling house of —, in —, county of —, as the time and place for hearing the parties in the case submitted to us by C. D. and yourself.

Dated

E. T.

15. *Arbitration bond.*

Know all men by these presents, that I, A. B., of —, am held and firmly bound to C. D., of —, in the sum of — dollars, to be paid to said C. D., to which payment I bind myself and my heirs firmly by these presents.

Sealed with my seal.

Dated the — day of —, 18—.

The condition of this obligation is, that if said A. B. shall perform the award of —, referees mutually chosen to adjudge and determine concerning all demands existing between the parties, so as said award is made in writing, then this obligation shall be void.

A. B. (seal.)

16. *Form of award.*

The referees named in the annexed agreement, having given to the parties due notice of the time and place of hearing, and having all heard, examined, and considered the allegations, evidence and witnesses of both parties, do award that the said A. B. recover of the said C. D. the sum of — dollars, and cost of reference, taxed at — dollars.

E. F., }
L. M., } Referees.
J. R., }

17. *Form of note with stipulation that goods for which same was given shall remain the property of payee.*

D—, May —, 187—.

For value received I promise to pay John Smith, or bearer, the sum of one hundred dollars in six months from date and interest at — per cent.

The horse for which the above note is given is to remain the property of said John Smith until the above note is paid.

Attest: JOHN DOE,

RICHARD DOE.

NOTE. The above if given for more than thirty dollars must be recorded in the same place and manner as mortgages of personal property.

18. *Mortgage of personal property.*

Know all men by these presents, that in consideration of the sum of — in hand well and truly paid before the signing, sealing and delivery

of these presents by — the receipt whereof — do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said —, to have and to hold the said granted and bargained — unto the said —, his heirs, executors, and administrators or assigns, to — only proper use, benefit, and behoof forever. And — the said — do avouch to be the true and lawful owner of the said —, and to have full power, good right, and lawful authority to dispose of the said — in manner aforesaid; and — do, for himself, his heirs, executors, and administrators, hereby covenant and agree to warrant and defend the said —, against the lawful claims and demands of all persons whatsoever, unto —, the said —, his heirs, executors, administrators, or assigns.

Provided nevertheless, that if the said — executors or administrators shall pay unto the said — executors, administrators, or assigns, the sum of —, then this bill of sale, and also —, shall be void.

Provided also, that it shall and may be lawful for said — to continue in possession of said —, without denial or interruption by said —.

In witness whereof, the said — have hereunto set his hand and seal this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

Signed, sealed, and delivered
in presence of

— —.

19. *Bill of sale of goods.*

Know all men by these presents, that I, A. B., of —, merchant, for and in consideration of the sum of — dollars, to me in hand paid by C. D., of the same place, at and before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) have bargained, sold, and delivered, and by these presents do bargain, sell, and deliver unto the said C. D., [here insert the particulars.] To have and to hold the said goods unto the said C. D., his executors, administrators, and assigns, to his and their own proper use and benefit forever. And I, the said A. B., for myself, and my heirs, executors, and administrators, will warrant and defend the said bargained premises unto the said C. D., his executors, administrators, and assigns, from and against all persons whomsoever.

In witness, &c.

NOTE. No contract for goods, &c., for thirty dollars or more, shall be good unless the purchaser accepts something in earnest to bind the bargain, or some note in writing be signed by the party charged, or his agent.

20. *Letter of attorney.*

Know all men by these presents, that I, A. B., of —, do appoint C. D., of —, my attorney, for me, and in my name, and to my use, (or his use,) [here recite the special purposes of the power,] to demand, recover, and receive of E. F., of —, [all sums of money, debts, and demands whatsoever, which are now due and owing to me by or from said E. F.;] [or, if to receive a legacy, say, "from I. B., executor of the will of A. B., late of —, deceased, a legacy of — dollars, bequeathed by the said A. B. by his will, dated the —, to be paid to me on —";] [or, if to receive rent, say, "from E. F., of —, all rent which is or may become due from him, for —, leased by me to him";] [or, if to receive money due on a bond, say, "of E. F., of —, the sum of —, due to me by his bond, dated —";] [or, if to receive sailor's wages, say, "from any person, all such sums of money as or may be due me for wages from any vessel to which I do or shall belong";] and to commence and prosecute to final judgment all processes in law or equity; to defend all suits against me; and to settle and compromise all matters in dispute, or submit the same to arbitration; and sufficient discharges for the same, for me and in my name, to execute and deliver; and to do all other things concerning the premises, as fully as I myself could do, if I were

personally present; hereby ratifying and confirming all the acts of my said attorney, or of his substitutes, by virtue of these presents.

In testimony whereof, I have hereunto set my hand and seal the — day of —.

Signed, sealed, and delivered)
in presence of —.

A. B. (seal.)

NOTE. If the letter of attorney go into another state, it should be acknowledged before a justice of the peace, or notary public.

21. *Revocation of the power of attorney.*

To all persons to whom these presents shall come, A. B. of —, sendeth greeting.

Whereas I, the said A. B., by my letter of attorney bearing date —, did constitute, &c., C. D. my attorney for certain purposes, and with certain powers in the said letter of attorney contained: Now know ye that I, the said A. B., for divers considerations me hereunto moving, have made void and revoked, and do hereby make void and revoke, the said letter of attorney, and all and singular the powers given by virtue thereof.

A. B.

In witness, &c.

22. *Guarantee for payment of goods sold to a third person.*

SIR:—

In consideration of your having agreed to sell to C. D., of —, in the way of his trade, such goods as he may call for, I, the undersigned A. B., do hereby promise to guarantee to you, the said E. F., that said C. D. shall make due payment for such goods as you may sell to him or his order, according to the credit that may be agreed on for the same, without notice of any neglect or omission on the part of said C. D., in the payment of such goods; provided my liability shall not exceed, at any one time, the sum of — dollars. And this guarantee shall continue in force until the expiration of one year from this date.

Dated

A. B.

To Mr. E. F.

COPARTNERSHIP.

23. *Agreement of copartnership.*

A. B., of —, and C. D., of —, agree as follows: The parties agree to become partners for the purpose of buying and selling such goods as are usually kept for sale or purchased at a retail store, in the town of —, for five years from this date.

1. The style of said copartnership shall be — — and Company.
2. Said parties have each contributed one thousand dollars as the capital stock of said firm. (Or as the case may be.)
3. All profits shall be equally divided; and all expenses of the business, and all losses, shall be equally borne in common.
4. Both parties shall give all their time and attention to the business of said firm for the common benefit; and neither party shall engage in any trade or business for his private advantage.
5. Correct books of account shall be kept, which shall always be open to the inspection of both parties, or their legal representatives, in which shall be regularly entered all moneys received and paid, and all purchases, sales, transactions, and accounts relating to the business of said firm.
6. An account of stock shall be taken and the accounts between the said parties shall be settled as often as once in every year, and oftener if requested in writing by either party.

7. Neither of the said parties shall become surety for any person, or bind the firm for surety, in any case, without the written consent of the other.

8. No money or other property shall be withdrawn by either party, or applied to his own use, except with the written consent of the other party; and in every such case the same shall be charged, and his share of profits reduced in proportion to the amount withdrawn.

9. At the close of the partnership, the stock, property, and debts shall be equally divided, after paying the debts and liabilities of the firm.

Witness our hands and seals this — day of —, A. D. 18—.

Signed, sealed, and delivered {	A. B. (seal.)
in the presence of —. }	C. D. (seal.)

24. *Agreement to continue a partnership.*

We, the within named A. B. and C. D., do, by these presents, declare and mutually covenant and agree unto and with each other, his and their executors, administrators, and assigns, to continue the joint trade and partnership within mentioned for the further term of — years, if both of us shall so long live, to be accounted from the expiration of — years from the — day of —, 18—, with all the provisions and restrictions herein contained.

In witness, &c.

25. *A dissolution of copartnership.*

A. B., of —, and C. D. of —, agree as follows: The partnership existing between said parties, under the firm of —, is dissolved. Said A. B., in consideration of \$—, paid to him by said C. D., grants and assigns to said C. D. all his interest and right in all the goods and stock of said firm, and in all the debts and demands due said firm, with full power to collect them by suit or otherwise in the name of said A. B. and for his own use.

Said A. B. agrees that he will not do any act by which said C. D. may be delayed or hindered from collecting any of said debts or demands; and that he will, on request, execute any proper instrument for enabling said C. D. to collect the same.

Said C. D. agrees to pay all debts and demands existing against said firm, and to indemnify and save harmless said A. B. from any loss, cost, damage, or expense to which he may be subject by reason of the same.

Witness our hands and seals, the — day of —, 18—.

Signed, sealed, and delivered {	A. B. (seal.)
in presence of —. }	C. D. (seal.)

26. *Notice on dissolution of copartnership.*

Notice is hereby given that the partnership lately subsisting between A. B. and C. D., both of —, under the firm of —, expired on —, (or was dissolved on —, by mutual consent.) All debts owing to the said partnership are to be received by the said A. B., and all demands on the said partnership are to be presented to him for payment; (or A. B. is authorized to settle all debts due to and by the said company.)

27. *Notice where only one partner leaves the firm.*

Notice is hereby given that the partnership between A. B. and C. D. and E. F. was dissolved on the — day of —, as far as relates to the said E. F. All debts due to the said partnership are to be paid, and those due from the same discharged, at the store of the late firm in —, where the business will be continued under the firm of B. and D.

28. *Limited partnerships in Maine.*

Persons forming such partnerships, shall sign a certificate as follows: —

Notice is hereby given that the subscribers have formed a partnership

under the name or firm of Wilcox & Rice; that George Wilcox, of ———, and Charles Rice, of ———, are general partners, and Thomas Anderson, of ———, is special partner; and that said special partner has contributed to the common stock of said partnership the sum of five thousand dollars. The business to be conducted by said firm in the city of ———, is a general commission and forwarding business. Said partnership commences on ———, and is to terminate on ———.

Dated at Portland this ——— day of ———, 18—.

GEORGE WILCOX,
CHARLES RICE,
THOMAS ANDERSON.

NOTE.—The above certificate must be acknowledged by all the parties, and recorded in the registry of deeds of the county; and after such registry, published in a newspaper printed in the county.

AGREEMENT.

29. *General form of agreement.*

Articles of agreement, made and concluded, the ——— day of ———, A. D., 18—, by and between A. B. of ———, in the county of ———, of the one part, and C. D. of ———, in the county of ———, and State of Maine, of the other part.

The said A. B. for the consideration hereinafter mentioned, doth hereby covenant and agree, that ———.

And the said C. D. doth hereby covenant and agree ———.

To the true performance of the several covenants and agreements aforesaid, the said parties do hereby respectively bind themselves, and their respective heirs, executors, and administrators, each to the other, his executors, administrators, and assigns, in the penal sum of ——— dollars.

In testimony whereof, they have thereto interchangeably set their hands and seals, the day and year above written.

Signed, sealed, and delivered in
presence of J. D.

A. B. (seal.)
C. D. (seal.)

30. *Agreement on sale of corn.*

It is agreed by A. B. of ———, and C. D. of ———, as follows:

Said A. B. agrees to sell and deliver to said C. D., at his store in ———, on or before the ——— day of ———, one hundred bushels of corn, warranted to be good and merchantable.

Said C. D. agrees to pay said A. B. ——— dollars, in cash, in full for said corn, on delivery.

Witness our hands and seals the ——— day of ———, 18—.

Signed, sealed, and delivered
in presence of ———.

A. B. (seal.)
C. D. (seal.)

31. *If to convey land.*

Said A. B. agrees to convey to said C. D. in fee, a certain tract of land [describe the premises] by a warrantee deed, in common form, for ——— dollars, on or before the ——— next. Said C. D. agrees to pay to said A. B. ——— dollars for the same, on delivery of the deed; and said C. D. may enter upon and occupy the premises, on ———.

Witness our hands and seals ——— day of ———, 187—.

Signed, sealed, and delivered
in presence of ———.

A. B. (seal.)
C. D. (seal.)

32. *Articles for the sale of an estate, with a penal clause for performance of covenants.*

Articles of agreement, made and concluded, the — day of —, in the year of our Lord —, by and between E. B. of &c. of the one part, and C. D., of &c., of the other part, as follows :

First, The said E. B., in consideration of the sum of \$500, to be paid as is hereinafter mentioned and agreed, doth covenant and agree with the said C. D., that he the said E. B. shall, on or before the — day of — next ensuing, by a good and sufficient deed, to be by him the said E. B., at his own cost and charge, duly made and executed, according to law, grant, convey, and confirm unto him the said C. D., his heirs and assigns, [here describe the premises.]

And the said C. D. for himself, his heirs, executors and administrators, doth covenant, promise, and grant, to and with the said E. B., his heirs and assigns, that he the said C. D. shall and will, on executing the said conveyance, pay or cause to be paid to the said E. B., his heirs or assigns, the said sum of \$500, the purchase money, for the said messuage and premises above mentioned.

And it is further agreed by and between the said parties to these presents, that the said C. D. his heirs and assigns, shall and may, on or before &c. next enter into and upon the said messuage and premises, and from thence receive and take the rents, issues and profits thereof, to his and their own uses.

And lastly, For the due performance of the several covenants and agreements aforesaid, the parties aforesaid do hereby respectively bind themselves their heirs, executors and administrators, each to the other, his executors, administrators and assigns, in the penal sum of \$1000. In testimony whereof they have hereunto interchangeably set their hands and seals, the day and year above written.

Witness our hands and seals — day of —, 187—.

Signed, sealed, and delivered
in presence of —.

A. B. (seal.)
C. D. (seal.)

33. *Agreement for building a house.*

Be it remembered, That on this — day of — it is agreed between A. B., of —, and C. D., of —, in manner and form following, to wit : the said C. D., for the considerations hereinafter mentioned, doth for himself, his heirs, executors and administrators, covenant with the said A. B., his executors, administrators and assigns, that he the said C. D., or his assigns, shall and will within the space of — next after the date hereof, in a good and workmanlike manner, and according to the best of his knowledge and skill, at — well and substantially erect, build, and finish one house or messuage, according to the draft or scheme hereunto annexed, of the dimensions following, viz. &c. and compose the same with such stone or brick, timber and other materials, as the said A. B. or his assigns, shall find and provide for the same : In consideration whereof, the said A. B. doth for himself, his executors and administrators, covenant with the said C. D., his executors, administrators and assigns, well and truly to pay unto the said C. D., his executors, administrators and assigns, the sum of —, in manner following, to wit : — at the beginning of the said work, — when the work shall be half done, and the remaining — in full for the said work, when the same shall be completely finished : And also that he, the said A. B., his executors, administrators or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick, tile, timber and other materials necessary for making and building of the said house. To the true and faithful performance of the several articles and agreements above mentioned, the said A. B. and

C. D. 'do hereby respectively bind themselves, their heirs, executors, and administrators, each to the other, in the penal sum of ——. In witness, &c,
Signed, &c.

34. *If to build a house.*

Said A. B. agrees to construct and complete for said C. D., on lot numbered —, on — street, in M., a two story dwelling house, agreeably to the following plan and specifications, signed by the parties; [here state the plan, &c.] to furnish all necessary materials, of good and suitable quality, and the work to be done in a thorough and workmanlike manner, on or before the — next, for the sum of one thousand dollars.

Said C. D. agrees to pay said sum of one thousand dollars, as follows: [here recite the time and manner of payments.]

Witness our hands and seals, the — day of —.

Specifications for the construction of buildings.

NOTE.—Specifications for the construction of buildings are extremely various. All that will be attempted will be to direct attention to the particulars which would ordinarily be embraced in a specification.

SPECIFICATIONS. Materials—size of buildings—height of stories.

Cellar. Size—depth—walls—quality of stone—thickness—how laid—posting—underpinning—depth—how hammered—lined.

Cellar Windows. How many—where—size—sash—glass.

Rollway. Where—how constructed—doors.

Frairie. Size of timbers—floor joists—rafters—how far apart.

Roof. Pitch—how framed—qualities of boards—shingles, quality—length—how laid—weather and saddle boards—lead about chimneys—dormer windows—gutters—conductors—scuttle.

Outside. How boarded—clapboarded, quality—how laid—weather boards—pilasters.

Chimneys. Foundations—quality of bricks—arch—trimmers—fireplaces, how many—where—what sizes—hearths and jams, what—flues—size—separate—plastered—oven and ash hole—arched—kind of doors—chimney tops—quality of bricks—height.

Windows. How many—where—size—sashes—springs—weights—glass, size—quality—finish—outside—inside—shutters—blinds—fastenings.

Doors. Outside—finish—inside—how many—size—thickness—panels—finish—locks—latches—finish of castings—steps—scrapers.

Floors. Double—under floor—quality of boards—upper—quality—width—thickness—seasoning—mop boards—width, &c.

Lathing and Plastering. Furrings, how close—laths, quality—mortar—sand, what—hair—thickness—number of coats—how put on.

Closets. How many—where—shelves—pins.

Stairs. Front—what—finish—banisters—back, cellar, and garret stairs.

Sink. How many—spouts, what, where—pump—where—what.

35. *Agreement between author and publisher of books.*

This indenture, made and concluded this — day of —; A. D. 187—, by and between A. B. of — in the county of — on one part, and C. D. of —, in the county of —, doing business at said —, on the other part,

Witnesseth, That the said A. B., for the consideration hereinafter mentioned, has agreed to sell and convey, and does by these presents sell and convey to the said C. D., their heirs and assigns, the sole right of printing, binding, publishing, introducing and vending a book whereof he, the said A. B. is author, entitled [insert title of book] so long as he, the said C. D. shall print, bind, and publish a sufficient number of copies of said book to supply the demand for sale. And the said A. B. does further agree to procure the copy-right to said book in his the said A. B.'s name, as soon as it can be

legally procured one-half of said copy-right to be owned by said A. B., and one-half to be assigned to said C. D. as soon as procured by said A. B. And the said C. D., on his part, for himself, his heirs, executors, administrators and assigns, does hereby covenant and agree to use due diligence in printing, binding, publishing, advertising, introducing and vending the aforesaid copies at his own expense and charge, to be printed on good and suitable paper, and to be stereotyped; the books to be properly bound with title on backs, the paper or pages to be about — inches long, about — inches wide with proper margins, the binding, lettering and printing to be done in a finished, workmanlike manner. And the said C. D. further covenants and agrees to render under oath, if so required by said A. B., his heirs, executors, administrators and assigns, quarter yearly, an account of the number of copies sold at wholesale and the number sold at retail, and to pay said A. B., his heirs, executors, administrators and assigns — cents on each and every copy sold at wholesale, and — cents on each and every copy sold at retail, and to pay and deliver to said A. B. — copies out of the first printed. In testimony whereof, the parties aforesaid have hereunto interchangeably set their hands and seals, the day above written.

Signed, sealed and delivered
in presence of E. F.

A. B. (seal.)
C. D. (seal.)

36. *Assignment of a debt or bond.*

Know all men by these presents that I, A. B., of —, in consideration of — dollars, to me paid by C. D., of —, do hereby grant, sell, and assign to said C. D. a certain debt due me from E. F., of —, for goods sold and delivered, (or, if a bond, a certain bond, dated the — made to me by G. H. for — dollars, conditioned for the payment of — dollars,) with full power to collect and discharge or dispose of the same in my name, at his pleasure, at his own expense and risk. And I do hereby covenant that said debt is justly due, and that I have not done, and will not do any act by which the collection thereof may be hindered or prevented.

Witness my hand and seal, the — day of —, 18—.

Signed and sealed in presence of —.

A. B. (seal.)

37. *Assignment by indorsement of a judgment, mortgage or lease.*

Know all men by these presents that I, E. D., the within named, in consideration of — dollars, to me paid by L. M., of —, do hereby grant and assign to said L. M. the judgment within mentioned, with full power to recover the same for his own use, at his own risk and expense. (If a mortgage, say, “do hereby grant and assign to said L. M. the within mortgage, the debt thereby secured, and all my right to the premises thereby conveyed, said mortgage being recorded in O— Registry of Deeds, Book —, page —.”) (If a lease, then say, do “hereby grant and assign to him, the said L. M., the lease within written, and do hereby covenant that I have not done, nor will not do any act by which said lease may be impaired.”)

Witness my hand and seal the — day of —.

E. D. (seal.)

NOTE.—If the assignment is of a mortgage it must be acknowledged in the same manner as deeds.

38. *Form of acknowledgement.*

O—, ss. May —, 187—. The above named A. B. acknowledged the foregoing instrument to be his free act and deed.

Before me,

J. P., Justice of the Peace.

39. *Assignment of a dower.*

This indenture, made between A. B. of —, and E. D., of —, widow of C. D., late of —, deceased, witnesses:—

That A. B. hereby assigns to —, [name the premises,] to hold to her, during her natural life, as her dower in all the lands and tenements whereof the said C. D. was seized at the time of his decease; and said E. D. hereby accepts the said premises as her dower in all the said lands and tenements, and releases her right and claim to all the residue of the same lands and tenements.

Witness our hands and seals, the — day of —.

Signed, sealed, and delivered
in presence of —.

A. B. (seal.)
E. D. (seal.)

40. *Assignment of a man's whole estate in trust for his creditors.*

Know all men by these presents that I, A. B., of —, in consideration of one dollar, to me paid by C. D., of —, and of the trusts herein expressed, do grant and assign to said C. D. all my property, estate, rights, and credits, of every description, (a schedule thereof is hereto annexed,) to have and to hold the same to said C. D. and his heirs, in trust to sell and dispose of said property to the best advantage, and collect and convert into money the said debts and demands, and after deducting from the proceeds of said property the expenses incurred by said C. D. in transacting the business, and a reasonable compensation for his services, to divide and pay the said proceeds among all the creditors of A. B. who shall become parties to this assignment within three months from the date hereof, in equal proportion of their respective claims.

C. D. agrees to execute said trust, being responsible only for his actual receipts or wilful defaults. The creditors whose names are subscribed agree to said assignment, and that this instrument shall be a release in full of all their claims, whenever their just proportion of all the proceeds of said property shall be paid.

Witness our hands and seals this — day of —, A. D., 18—.

Signed, sealed, and delivered
in presence of —.

A. B. (seal.)
C. D. (seal.)

NOTE. This assignment should be sworn to, as follows:

I do solemnly swear that I have placed and assigned all my property, of every description, in the hands of said C. D., to be divided among all my creditors who shall become parties to said assignment within three months from the date thereof, in proportion to their respective claims. A. B.

C—, ss. — 18—. Personally appeared A. B., and made oath that the above affidavit, by him subscribed, is true.

Before me,

J. L., Justice of the Peace.

A clause is usually inserted whereby the creditors covenant to discharge the debtor, in consideration of the assignment of his property.

41. *Declaration of trust.*

I, A. B., of —, do hereby acknowledge and declare that a certain writing [here describe the particular instrument] is left and deposited in my hands, by and in trust for C. D. and E. F., of —, to be held by me and my legal representatives only, in trust, for the convenience, use, benefit and advan-

✓ tage of said C. D. and E. F., and their legal representatives; and on demand from them, or either of them, that I will produce the same, for the use of either or both of said parties.

Witness my hand, the ——— day of ———, 18—.

A. B.

42. *Bond.*

Know all men by these presents that I, A. B., of C., am held and firmly bound to C. D., of L., in the sum of ——— dollars, to be paid to said C. D., or his attorney, executors, administrators, or assigns, for which payment well and truly to be made I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal.

Dated the ——— day of ———.

The condition of this obligation is such, that if the above bounden A. B., his heirs, &c., do and shall well and truly pay, or cause to be paid, unto the above named C. D., his executors, &c., the full sum of ——— dollars, with lawful interest for the same, on ——— next ensuing, without fraud or delay, then this obligation to be void; otherwise the same shall remain in full force.

A. B. (seal.)

Sealed and delivered in presence of ———.

43. *Release of debt on mislaid or lost bond.*

Know all men by these presents that I, A. B., of C., &c., have received of C. D., of said C., two hundred dollars, in full satisfaction of a certain bond bearing date the ——— day of ———, A. D. 18—, for the sum of four hundred dollars, with a condition to be void on payment of the sum of two hundred dollars in two years, made and executed by the said C. D. to me, the said A. B., (which bond is now lost or mislaid, so that it cannot be found to be delivered up to the said C. D. to be cancelled;) and I do hereby release and discharge the said C. D. from all demands which I have against him by virtue of said bond.

In witness whereof I have hereunto set my hand and seal, this ——— day of ———, A. D. 18—.

Signed, sealed and delivered }
in presence of }
J. S.
S. D.

A. B. (L. S.)

44. *Condition to maintain a person.*

[Obligation as in the preceding bond.]

The condition of this obligation is such, that if the said A. B. shall, during the natural life of said C. D., suitably support and maintain the said C. D., and provide him with suitable clothes, food, drink, medicine, and nursing, and all other things necessary, in the house of said A. B. [or in such suitable house as said A. B. may provide,] then this obligation shall be void; otherwise the same shall remain in full force.

45. *Condition of indemnity for signing a probate bond.*

The condition of this obligation is such, that if said A. B. shall indemnify the said C. D. against all loss, cost, damage, and expense to which he may be subjected by reason of his signing, at the request, and as surety for said A. B. a bond to the judge of probate of the county of ———, in the penalty of ——— dollars, conditioned for the faithful discharge by said A. B. of his duties as executor of the will of G. D., deceased, then this obligation shall be void; otherwise, the same shall remain in full force.

46. *Condition of a bond of a treasurer of a company.*

Whereas the above bound A. B. has been chosen treasurer of the trustees of ——— Academy, by reason whereof he will receive into his hands divers sums of money, notes, chattels, and other things, the property of said trustees; now the condition of this obligation is such that if said A. B., his executors or administrators, at the expiration of his said office, upon request to him or them to be made, shall make and give unto the said trustees a true and just account of all such sum or sums of money, notes, chattels, and other things, as have come into his hands or possession as treasurer aforesaid, and shall pay and deliver over to his successor in office, or any other person duly authorized to receive the same, all such balance or sums of money, notes, chattels, and other things, as shall be in his hands, and due by him to the said trustees, then this obligation shall be void, otherwise, &c.

47. *Condition to a town for the support of a bastard child.*

The condition of this obligation is such, that if the said A. B. shall indemnify the said town of ——— from all expenses, costs, and damages which may accrue by reason of the birth, maintenance, or education of a certain bastard child with which one E. F. is now pregnant, and of which said E. F. has on oath complained that said A. B. is the father, then this obligation shall be void, otherwise, &c.

48. *Condition to pay a woman for the support of a bastard child.*

The condition of this obligation is such, that if said A. B. shall pay to said C. D., towards the support and maintenance of a bastard child of which said C. D. has lately been delivered, and of which said C. D. has on oath complained that said A. B. is the father, ——— per week, from the ——— day ——— during ——— years, if said child shall so long live, then this obligation to be void, otherwise, &c.

OF CONVEYANCES.

A conveyance is a deed which passes or conveys lands from one man to another.

The most common conveyances now in use are deeds of warranty, quitclaim, mortgage, lease, release and will.

OF COVENANTS.

A covenant is the consent or agreement of two or more, by deed in writing, sealed and delivered.

All covenants between persons must be to do what is possible and lawful, or they will not be binding.

All covenants must, as to time and place, be exactly performed, and no cause of action can arise from them till some breach thereof.

If no time be limited for the doing of a thing, it shall be done in a reasonable time.

When one, by his own act, disables himself to perform a covenant, it is a breach of it.

OF DEEDS.

A deed is an instrument signed, sealed and delivered, comprehending a contract or bargain between party and party.

It is requisite that a deed be founded upon good and sufficient consideration, and made by persons able to contract and be contracted with.

49. *Mortgage Deed.*

Know all men by these presents that I, William Allen, of Gorham, in the county of Cumberland, and State of Maine, trader, for and in consideration of ——— dollars paid by Charles Knox, of Alfred, in the county of York, and State aforesaid, yeoman, the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold and conveyed, and do hereby give, grant, bargain, sell and convey unto the said Knox and his heirs and assigns, forever, [describe the premises.]

To have and to hold the said premises, with all the privileges and appurtenances to the same belonging, to the said Knox, his heirs and assigns forever. And I do covenant with the said Knox, his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same, in manner aforesaid; and that I and my heirs will warrant and defend the same to the said Knox and his heirs and assigns forever, against the lawful claims of all persons.

Provided, nevertheless, that if I, the said Allen, my heirs, executors, or administrators, shall pay to the said Knox, his heirs, executors, administrators, or assigns, the sum of five hundred dollars, with interest, within one year from date, agreeably to my note of even date for that sum, payable to said Knox or order, then this deed shall be void; otherwise it shall remain in full force.

In witness whereof, I have hereunto set my hand and seal, this — day of —, A. D. 18—.

WILLIAM ALLEN. (seal.)

Signed, sealed and delivered in presence of —.

STATE OF MAINE.

Cumberland, ss.—, 18—. The above named William Allen acknowledged the foregoing instrument to be his free act and deed, before me,

A. D., Justice of the Peace.

NOTE. 1. In a mortgage deed, may be inserted a proviso to keep the premises insured.

Provided, nevertheless, that the said William Allen shall keep the building, standing on the land aforesaid, insured against fire, in a sum not less than — dollars, for the benefit of said mortgagee, and his executors, administrators, and assigns, at such insurance office as said Knox shall approve.

2. Condition that mortgager shall occupy.

Provided that, until condition broken, said William Allen, doing no waste, shall retain possession of said premises, for his own use.

50. *Quitclaim deed.*

Know all men by these presents, that I, A. B., of —, in the county of —, and state of Maine, in consideration of — dollars, paid by C. D. of —, in the county of —, the receipt whereof I do hereby acknowledge, do

hereby remise, release, bargain, sell and convey, and forever quitclaim unto the said C. D., his heirs and assigns forever, all my right, title, and interest in and to [describe the premises] situate in —.

To have and to hold, the same, together with all the privileges and appurtenances thereunto belonging, to the said C. D., his heirs and assigns forever.

And I do covenant with the said C. D., his heirs and assigns, that I will warrant and defend the premises, to him the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under me.

In witness whereof, I, the said A. B., and E. F., wife of the said A. B., in testimony of her relinquishment of dower in the above described premises, have hereunto set our hands and seals this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

Signed, sealed and delivered

in presence of L. M.

A. B. (seal.)

E. F. (seal.)

Oxford, ss. — 187—. Personally appeared the above named A. B., and acknowledged the above instrument to be his free act and deed.

Before me,

J. P., Justice of the Peace.

NOTE. For a naked quitclaim deed omit the covenant clause, commencing with (and I do covenant, &c.,) and insert after (assigns forever), (so that neither I nor my heirs shall ever claim any right or title thereto forever.)

51. Warranty deed.

Know all men by these presents, that I, A. B., of —, in the county of —, and state of —, in consideration of the sum of — dollars paid by C. D. of —, in the county of —, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said C. D., his heirs and assigns forever, [here describe the premises.]

To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said C. D., his heirs and assigns, to their use and behoof forever. And I do covenant with the said C. D., his heirs and assigns, that I am lawfully seized in fee of the premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said C. D. to hold as aforesaid; and that I and my heirs, shall and will warrant and defend the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said A. B. and E. F., wife of the said A. B., in testimony of her relinquishment of her right of dower in the above described premises, have hereunto set our hands and seals this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

Signed, sealed and delivered

in presence of L. M.

A. B. (seal.)

E. F. (seal.)

Oxford, ss. — 187—. Personally appeared the above named A. B., and acknowledged the above instrument to be his free act and deed.

Before me,

L. M., Justice of the Peace.

52. Deed by attorney.

Know all men by these presents, that I, A. B., of —, &c., by my attorney C. D., duly authorized by letter of attorney, under my hand and seal, in consideration of — dollars, to be paid by E. F., of —, do sell and convey to said E. F. and his heirs forever, [here describe the premises.]

To have and to hold the said premises, with all the privileges and appurtenances to the same belonging, to the said grantee and his heirs forever.

And I do covenant with the said grantee and his heirs, that I am rightfully seized in fee of said premises; that they are free from all incumbrances; that

I have good right to sell and convey the same, in manner aforesaid; and that I and my heirs will warrant the said premises to the said grantee and his heirs forever, against the lawful claims of all persons.

In witness whereof I have, by my said attorney, hereunto set my hand and seal this — day of —, 18—.

A. B. (seal.)

By C. D., his attorney.

Signed, sealed, and delivered in presence of —.

State of —. C—, ss. Then said A. B., (by his attorney C. D., above named,) acknowledged the above instrument to be his free act and deed. Before me,

—, Justice of the Peace.

NOTE. The power of attorney should be recorded with the deed.

53. *Deed of partition.*

This indenture made between A. B., of —, C. D., of —, and E. F., of —, witnesseth:

That said parties have agreed to make partition of a certain tract of land situated in —, bounded —, containing —, now owned by them as tenants in common, in manner following:

The said A. B. shall hold in severalty, — acres, bounded —.

The said C. D. shall hold in severalty, — acres, bounded —.

The said E. F. shall hold in severalty, — acres, bounded —.

And to each of said parties and his heirs, the other two parties do grant and release the tract assigned to him as aforesaid, to hold to him and his heirs, in severalty forever; and do hereby covenant to warrant and defend the same to him and his heirs, against the lawful claims of all persons claiming under them or either of them.

In witness whereof, the said A. B., C. D., and E. F., have interchangeably set their hands and seals, the — day of —, A. D. 18—.

A. B. (seal.)

C. D. (seal.)

E. F. (seal.)

Signed, sealed, and delivered
in presence of —.

54. *Deed of gift of land.*

[The deed begins in the usual form, and may contain in substance as follows:]

That the said A. B., for and in consideration of the natural love and affection which he hath unto the said C. D., hath given, granted, aliened, released, and confirmed, and by these presents doth, &c., unto the said C. D., his heirs and assigns, all that tract of land, situate in — and — together with the privileges and appurtenances to the same belonging; to have and to hold the same unto the said C. D., and his heirs and assigns.

In witness whereof, &c.

To be acknowledged and recorded.

55. *Sheriff's deed of right and equity.*

Know all men by these presents, that I, —, of —, in the county of —, and state of Maine, a deputy sheriff under —, Esq., sheriff of the same county, at a public vendue, held at the —, in the county of —, aforesaid, on this — day of —, in the year of our Lord one thousand eight hundred and —, having given notice in writing of the time and place of sale, to the judgment debtor in the execution hereafter mentioned, by —, and having given public notice of the time and place of sale, by posting up notifications thereof in two public places in the town of —, and also by posting up notifications thereof in one public place in each of the adjoining towns of —, and —, thirty days before the time of sale, and having caused an advertisement of the time and place of sale to

be published three weeks successively before the day of sale, in the ———, a public newspaper printed in ———, in said county, have by virtue of an execution in my hands, in favor of ———, in the county of ———, against ———, of ———, in said county of ———, in consideration of the sum of ——— dollars and ——— cents, of the lawful money of the said state, paid to me this day, by ———, of ———, in said county of ———, sold to the said ———, he being the highest bidder therefor, all the right in equity of redemption which the said ——— has of redeeming the following described real estate, lying in ——— aforesaid, mortgaged by the said ——— to ———, of ———, in said county of ———, to wit: [Insert description of premises.] reserving liberty to the said ——— to redeem the said right in equity, by paying within one year after the date of these presents, all such sums of money as by the statutes of the state he ought to pay, in order to redeem the said right in equity.

In witness whereof, I have hereunto set my hand and seal, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

Signed, sealed and delivered in presence of ———,
———, ss. ——— 18—. Personally appeared ———, and acknowledged the above instrument to be his free act and deed.

Before me, ———, Justice of the Peace.

When the wife has the title of real estate, that came to her directly or indirectly from her husband or his relatives, the husband must join in the deed with the wife, as follows:

Know all men by these presents, that we, A. B., of &c., and C. B., wife of said A. B., in her right, in consideration, &c.

NOTE. Both husband and wife shall acknowledge the above.

56. *Deed of covenant, to stand seized to uses.*

Know all men by these presents, that I, A. B., of &c., in consideration of the love and affection I bear to my son, C. B., do, for myself and my heirs, covenant with the said C. B. and his heirs that I will henceforth stand seized of my homestead farm, situate in said ———, containing ——— acres, more or less, conveyed to me by J. L., by his deed, recorded in the ——— registry, vol. ———, page ———, with all the privileges and appurtenances to the same belonging, for the uses and purposes following, that is to say: To my own use, during my natural life, without impeachment of waste, and after my decease to the use of said C. B., his heirs and assigns forever.

Provided, however, that if said C. B. shall neglect or refuse, at my request, to stock, cultivate and improve said farm, in a husbandlike manner, and to deliver to me in proper order in the buildings on said premises, one-half of all the produce and income of said farm and stock, upon my allowing him the use of the easterly half of the house, then this conveyance shall be void.

In witness whereof, I have hereunto set my hand and seal, this ——— day of ———, 18—.

Signed, sealed, &c.

A. B. [L. s.]

To be acknowledged as before.

57. *Guardian's deed.*

Know all men by these presents, that I, A. B., of &c., gentleman, as I am guardian of C. D. and E. F., minors under the years of twenty-one years, having obtained license from the honorable judge of probate for the county of ———, at a court of probate held at ———, within and for the county of ———, on the ——— day of ———, to sell and convey the real estate of the said minors, and having, agreeably to the directions of the said court, given due notice of said sale, did on the ——— day of ———, pursuant to the license and notice aforesaid, sell at public vendue to G. H., of &c., the estate hereafter described, the same having been struck off to him for the sum of

one hundred dollars, he being the highest bidder therefor, viz.: [insert the description.]

Therefore I, the said A. B., do, by virtue of the power and authority with which I am as aforesaid vested, and in consideration of the aforesaid sum of one hundred dollars, to me paid by the said G. H., the receipt whereof I do hereby acknowledge, have given, granted, and sold, and by these presents do give, grant, sell, and convey to the said G. H., his heirs and assigns forever, the above described premises, with all the privileges and appurtenances to the same belonging. To have and to hold the same, in manner as aforesaid, to the said G. H., his heirs and assigns forever. And I, the said A. B., in my said capacity, do covenant to and with the said G. H., his heirs and assigns, that I have in all things observed the rules and directions of the law in advertising and selling said estate, and have good right and lawful authority to sell and convey the same in manner as aforesaid.

In witness whereof, I have hereunto set my hand and seal in my said capacity, this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

Signed, sealed, and delivered

A. B. [L. s.]

in presence of M. N.

—, ss., 187—. Personally appeared the above named A. B., and acknowledged the above instrument to be his free act and deed.

Before me,

S. S., Justice of the Peace.

58. *Administrator's deeds, public sale.*

Know all men by these presents, that I, A. B., of —, in the county of —, and state of —, administrator of the goods and estate of E. F., late of —, in said county, deceased, having obtained license from the honorable C. D., judge of probate, within and for the county of —, and state of Maine, to sell and convey the real estate of the said E. F., and having, agreeably to law and the directions of the said court, given due notice of said sale, did on the — day of —, pursuant to the license and notice aforesaid, sell at public vendue to G. H. of — in the county of —, the estate hereafter described, the same having been struck off to him for the sum of — dollars, he being the highest bidder therefor, viz:—

Therefore I, the said A. B., by virtue of the power and authority with which I am as aforesaid vested, and in consideration of the aforesaid sum of — dollars to me paid by the said G. H., the receipt whereof I do hereby acknowledge, have given, granted, and sold, and by these presents do give, grant, sell, and convey to the said G. H., his heirs and assigns forever, the above-described premises, with all the privileges and appurtenances to the same belonging. To have and to hold the same, in manner as aforesaid, to the said G. H., his heirs and assigns forever. And I, the said A. B., in my said capacity, do covenant to and with the said G. H., his heirs and assigns, that I have in all things observed the rules and directions of the law in advertising and selling said estate, and have good right and lawful authority to sell and convey the same in manner as aforesaid.

In witness whereof, I have hereunto set my hand and seal in my said capacity, this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

Signed, sealed and delivered

A. B., [L. s.] Admr.

in presence of —.

O —, ss., 187—. Personally appeared the above-named A. B., and acknowledged the above instrument to be his free act and deed.

Before me,

L. M., Justice of the Peace.

59. *A deed by an administrator of land, which his intestate had bound himself by deed to convey.*

To all people to whom &c., A. B., of —, administrator of the goods and estate which were of C. D., late of —, deceased, sends greeting.

Whereas, [here recite the agreement of the intestate to convey, and that the administrator had obtained license, &c.] Now know ye, that by the authority and license aforesaid, and in order to fulfil and perform all things in the above-mentioned contract or agreement, on the part of the said A. B. to be performed, in consideration of the sum of —, to me paid by the said C. D., the receipt, &c., and in consideration that the said C. D. hath performed and fulfilled all things in the above recited contract or agreement, on his part to be performed and fulfilled, I, the said A. B., have granted, bargained, sold, conveyed, released and confirmed, and do hereby, &c., to the said C. D., his heirs and assigns forever, the said, &c., with the appurtenances; to have and to hold the same to the said C. D., his heirs and assigns, to his and their use forever, &c.

60. *A deed given by executors under an authority in a will.*

To all persons to whom these presents shall come, we, A. B., C. D., and E. F., of —, executors of the last will and testament of G. H., late of —, deceased, send greeting.

Whereas the said G. H., to enable his executors to make an equal division of his estate according to his said will, did therein and thereby authorize them to make sale of, and convey all his real estate, either at public or private sale, as to them should seem meet, and to make good and sufficient deeds of bargain and sale thereof, to the purchaser and their heirs and assigns, and in and by the said will did appoint us the said A. B., C. D., and E. F., executors thereof.

Now know ye, that by virtue of the power and authority aforesaid, and of every other power us hereunto enabling, and in consideration of the sum of —, to us paid by K. L. and M. N., of —, the receipt whereof we do hereby acknowledge, we have granted, bargained, sold and conveyed, and do hereby grant, bargain, sell and convey, to the said K. L. and M. N., their heirs and assigns forever, a certain parcel of land, situate, &c. To have and to hold the granted premises to the said K. L. and M. N., their heirs and assigns, as tenants in common, and not as joint tenants. And we, the said A. B., C. D., and E. F., for ourselves, our heirs, executors and administrators, covenant with the said K. L. and M. N., their heirs and assigns as aforesaid, that the said G. H. died seized of the granted premises, that they are free from all incumbrances done or suffered by us, or either of us; that we will, and our heirs, executors and administrators, shall warrant and defend the same to the said K. L. and M. N., their respective heirs and assigns, against the lawful claims and demands of all persons claiming by, from, or under the said G. H., or us, or either of us.

In witness whereof, &c.

61. *Deed given by the inhabitants of a town.*

Know all men, &c. that the inhabitants of the town of —, in the county of —, and State of —, in consideration of the sum of —, to them paid by A. B., of —, the receipt whereof they do hereby acknowledge, have given, granted, bargained, sold and conveyed, and by these presents, do give &c., unto the said A. B., his heirs and assigns, a piece of land, &c. To have and to hold, &c. (in common form.)

And the said inhabitants, for themselves and their successors, do hereby covenant with the said A. B., his heirs and assigns, that, at the execution of these presents, the said inhabitants are lawfully seized in fee of the bargained premises; that the same are free from all incumbrances; that the said inhabitants have good right, full power and lawful authority, to sell and convey the same to the said A. B., in manner aforesaid; and that the said inhabitants and their successors, shall and will, warrant and defend the same to the said A. B., his heirs and assigns forever, against the lawful claims and demands of all persons whatsoever.

In witness whereof the inhabitants of the said town, by the hands of C. D.

their treasurer [or any other person or persons, as the case may be], hereunto duly authorized by a vote of the inhabitants of the said town, at a meeting legally holden for that purpose on —, have hereunto-set their seal, and the said treasurer hath here under written his name.

In witness, &c.

62. *Description of mills in a deed.*

A certain sawmill, situate in A., in said county, known as the — mill, together with the mill-dam, mill yard, water privilege and rights of flowage, and all the real estate, rights and privileges appurtenant thereto or occupied therewith, together with a right of way for all persons from the public highway to said mill over the ground now used for that purpose.

63. *Description of a mill privilege in a deed.*

A certain mill privilege, situate on the easterly side of — river, in said —, described as follows: Beginning at the mouth of — brook; thence westerly to the centre of said river; thence southerly down the middle of said river, about — rods, to a point due west of a large hemlock tree, marked; thence easterly to said hemlock and on the same course, six rods from said hemlock to a stake and stones; thence northerly to said brook, six rods east of the mouth of the same; thence westerly to the first mentioned bound; with the right to draw so much of the water of said river, and no more, as will pass through a gate six feet long and one foot deep, under a head of eight feet, at all times when the water shall not be necessary for the use of the grist-mill on the west side of said river, or other mill erected instead thereof, and using the same quantity of water as is now required for said grist-mill; said privilege being subject at all times to the obligation to maintain and keep in perfect repair all that part of the mill-dam and its appurtenances which is situate on the premises before conveyed.

The delivery of a deed may be either absolute, that is, to the grantee, or to some person for him; or conditional, that is, to a third person to keep till something is done by the grantee; in which last case it is not delivered as a deed, but as an escrow, that is a scrawl or writing, which is not to take effect till the condition is performed; when it becomes a good deed. Cruise's Digest, vol. 4, p. 34, § 87.

When a deed is delivered as an escrow, it is of no force till the condition is performed; and although the party to whom it is made, should get it into his possession before the condition is performed, yet he can derive no benefit from it. But if either of the parties die before the condition is performed, and afterwards the condition is performed, the deed becomes good, and will take effect from its first delivery. Cruise's Digest, vol. 4, p. 34, § 88.

Delivery is essential to the operation of the deed as a valid instrument, and it is not necessary that there should be an express declaration that a deed is delivered to a third person as an escrow

to make it such. If the delivery is conditional, so as not to constitute any present obligation, it is an escrow, and not a deed. *Jackson v. Sheldon*, 22 M. R., 569.

By the statutes of Maine, the acknowledgment of one of several joint grantors is sufficient. R. S. Ch. 73, § 17.

When a grantor refuses to acknowledge his deed, the grantee or person claiming under him may leave a true copy of it with the register of deeds, and it shall have the same effect for forty days as a record of the deed. *Ib.* § 20.

In such case a justice of the peace where the grantor resides, or where his land lies, upon application of the grantee or person claiming under him, may summon the grantor to appear before him at a time and place named, to hear the testimony of the subscribing witnesses. The date of the deed, the names of the parties, and of the subscribing witnesses to it, must be stated in the summons, which must be served seven days before the time for proving the deed. *Ib.* § 21.

64. *Application when grantor refuses to acknowledge.*

To D. S. Esquire, one of the justices of the peace, within and for the county of K.

Complains E. T. of G. in said county [addition] that P. Q. of O. [addition] on the — day of —, signed a deed conveying to him in fee simple, [here describe the estate] which the said P. Q. doth refuse to acknowledge before a justice of the peace. He therefore requests, that the said P. Q. may be summoned to appear before you and hear the testimony of the subscribing witnesses thereunto, and that such other proceedings may be had thereon as the law directs. Dated at G., the — day of —, 18—. F. L.

65. *Summons.*

[L. s.] K—, ss. To P. Q. of O. in said county [addition], Greeting.

Whereas E. T. of G. in said county [addition] hath complained to me the subscriber, one of the justices of the peace within and for said county, that on the — day of — you signed and sealed a deed, conveying to him in fee simple [describe the premises]. Which deed he says you have refused to acknowledge before a justice of the peace; and he hath therefore requested that you may be summoned to appear before me to hear the subscribing witnesses thereunto, and further proceedings thereon had as the law directs. You are hereby notified and required, in the name of the State of Maine, to appear before me, the said justice, if you see cause, on the — day of —, at — o'clock in the —noon, at my dwelling-house in L. in said county, then and there to hear the testimony of the subscribing witnesses to said deed to wit, H. V. and R. G., that such proceedings may be had thereon as the law directs. Given under my hand and seal the — day of —.

D. S., Justice of the Peace.

When the justice at such hearing is satisfied by the testimony of witnesses, that they saw the deed duly executed by the grantor,

he shall certify the same thereon, and state, in his certificate, the presence or absence of the grantor. R. S. Ch. 73, § 22.

A certificate of acknowledgment, or proof of execution as aforesaid, must be endorsed on or annexed to the deed, and then the deed and certificate may be recorded in the registry of deeds. No deed can be recorded without such certificate. Ib. § 23.

66. Certificate of such proceedings to be annexed to the deed.

K—, ss. —, 18—. At an examination this day had before me D. S., Esquire, one of the justices of the peace within and for said county, at my dwelling house in L. in said county, relative to a deed to which this certificate is annexed, in pursuance of a summons issued by me to the said P. Q. at the request of the said E. T., who complained that the said P. Q. had refused to acknowledge the said deed, which summons was duly served and returned and the said P. Q. was [or was not] present. I hereby certify that the said H. V. and R. G. appeared and made oath that they [or he] saw the said P. Q. voluntarily sign and seal the said deed, and that they subscribed their names as witnesses thereunto at the same time.

D. S., Justice of the Peace.

When a person, authorized to take acknowledgments, takes and certifies one in good faith after the expiration of his commission, not being aware of it, such acknowledgment shall be as valid as if done before such expiration. R. S. Ch. 73, § 24.

67. Form of a lease.

This indenture, made this — day of —, A. D. 18—, between A. B., of E., in the county of —, and State of Maine, trader, and C. D., of said E., yeoman, witnesseth:

That the said A. B. doth demise and lease unto said C. D. all that [describe the premises] to hold for the term of — years from the date hereof, with all the privileges and appurtenances thereto belonging; yielding and paying therefor yearly on every first of —, during said term, unto said A. B., or his assigns, the yearly rent of — dollars, in four equal payments, quarter yearly.

[Here insert any provisions or conditions, such as to terminate the lease by notice; or that the lease shall be void on non-payment of rent.]

And the said A. B. agrees with said C. D., that said C. D. shall peaceably possess the said premises during said term, without the lawful interruption or eviction of any person whatsoever. [Here may be inserted any other covenants on the part of the lessor; as covenant to deduct half the taxes from the rent, &c.] And the said C. D. covenants to pay the said rent in manner aforesaid, and to deliver up said premises to the said A. B., or his attorney, peaceably and quietly, at the end of said term, in as good condition as the same now are, reasonable use, wear and tear thereof, and fire and other casualty excepted; and to pay all taxes on said demised premises; and that he will not, during said term, do or suffer any waste in the demised premises, [nor underlet the same or any part thereof,] nor permit any other person to occupy the same, or any part thereof; nor make, or suffer to be made, any alteration therein, without the consent of said A. B. or his assigns for that purpose; and also, that said A. B., or his attorney or agent, may enter the premises for the purpose of viewing and making improvement, at reasonable times, in the day time.

In witness, &c.

Other covenants may be inserted in a lease.

1. Covenants to deduct half the taxes from the rent.

And that said A. B. will allow out of the rent aforesaid, one-half of the taxes which shall be legally assessed on the premises, and paid by C. D.

2. Covenant on the part of lessee not to overstock the pasture.

And said C. D. will not at any time pasture, or suffer to be pastured upon the said premises, or any part thereof, any larger stock of cattle than have been usually pastured thereon, in the two last preceding years.

3. Covenant to carry on in a husbandlike manner.

And said C. D. will, in all respects, manage and carry on said premises in a husbandlike manner, according to the custom of the country.

4. Covenant not to till more than a certain quantity.

And said C. D. will not have, use, or employ, in plowing or tillage, a greater part of land than — acres, at any one time, or in any one year, during the term hereby demised.

5. Covenant not to keep tavern.

And that no person shall sell or retail any beer, ale, or other liquors whatever, or keep any victualing, or other public house of entertainment in the buildings on said premises, without a license from the said A. B., in writing.

68. *Brief lease.*

A. B., of —, and C. D., of —, agree as follows, to wit:

A. B. leases to C. D. his house in D., [describe the premises,] for one year.

C. D. agrees to pay one hundred dollars a year rent, payable —, and not to assign or lease the same, nor make alterations, nor carry on any offensive trade therein, without the written consent of A. B.; to quit the same at the termination of this lease; and to leave the same in good condition and repair, unavoidable casualties excepted.

This lease shall be void if C. D. fails to perform this agreement.

Witness our hands and seals this — day of —, 18—.

A. B. (seal.)
C. D. (seal.)

69. *Notice from a landlord to a tenant.*

Sir:—You being in possession of a certain house and lot of ground, with the appurtenances, belonging to me, situate in —, in Portland, which was demised to you by me for five years, which said term will expire and terminate on the — day of — next. I hereby notify you that it is my desire to have again and repossess the said premises, and I do hereby require and demand you to leave the same.

Witness my hand, the — day of —, 18—. To Mr. C. D.

A. B.

70. *Apprenticeship.*

This indenture, made this — day of —, A. D. 18—, by and between A. B., of —, in the county of —, printer, and C. D., of said —, printer, witnesseth:

That the said A. B. doth by these presents, with the consent of his son, G. W., a minor, above the age of fourteen years, signified by his signing this indenture, hereby place, bind, and indent him to the said C. D., to learn the art and trade of a printer, and with him, the said C. D., after the manner of

an apprentice, to dwell and serve from the day of the en sealing hereof, until the —, when the said minor will arrive at the age of twenty-one years. And during said term the said apprentice shall well and faithfully serve his said master, and shall give and devote to him his whole time and labor. He shall not marry during said term, nor use ardent spirits, or practice gaming or other unlawful sports, nor waste, injure, or destroy the property of his master; but conduct himself in a sober, temperate, honest manner, and as a good and faithful apprentice ought to do during all the time aforesaid.

And the said C. D., for himself, his executors and administrators, doth hereby covenant with the said A. B., that he will faithfully instruct said apprentice in the art or trade aforesaid, as far as said apprentice may be capable to learn, and constantly provide him with good, suitable, and sufficient food, lodging, and clothing, and all other things necessary in sickness and health, and will train him up in the habits of industry, temperance, and virtue, and pay to the said A. B. for the use of said apprentice, the sums of money following, namely: [state the amount and manner of payment.]

And the said G. W. hereby signifies his assent to the terms of this indenture, and promises faithfully to keep and perform all things to be kept or performed by him.

In testimony whereof, the said parties have hereunto set their hands and seals this — day of —, in the year —.

Signed, sealed, and delivered
in presence of —.

A. B. (seal.)
C. D. (seal.)
G. W. (seal.)

71. *Proxy to vote for directors.*

Be it known that I, A. B., of —, in the county of —, and State of Maine, Esquire, have constituted and appointed, and by these presents do constitute and appoint C. D. of —, to be my true and lawful substitute and proxy, for me and in my name, to vote at any election for directors of —, or on any question that may be put at a stated or special meeting of the stockholders of the said —, as fully as I might or could do if personally present.

Witness my hand this — day of —, A. D., 18—.

A. B.

72. *Marriage settlement.*

Articles of agreement between A. B. of —, C. D., of —, and E. F., of —.

Whereas said A. B. and said C. D. intend marriage, and it is agreed by and between said parties that the real and personal estate of said C. D. shall be settled and secured for her separate use; and therefore said C. D., in consideration of one dollar, to be paid by said E. F., sells and conveys to him and his heirs a certain tract of land [describe the real estate,] and also the following goods and chattels, [describe the personal estate,] to hold the same in trust, for the following purposes, and no other:

First. That said E. F. shall permit the said C. D. to occupy, improve and manage the said property, and take the profits thereof, at her own discretion, and for her own use, during her pleasure, without the interference of said A. B., or any other person.

Second. The said trustee, at the request of said C. D., shall take possession of said property, and manage and improve the same to the best advantage, and pay the income or profits thereof to said C. D., without the interference of said A. B., or any other person.

Third. The said E. F., at the request of said C. D., shall have power to cause any part of the property held by him in trust as aforesaid, to be sold, and the proceeds thereof invested in other safe personal estate, or securities, to be held subject to the same trusts as the property hereby conveyed.

Fourth. The said E. F. shall, with the assent of said C. D., invest any part of the income of said property in real or personal estate, or securities, upon the trusts aforesaid.

Fifth. The said E. F. shall, at the request of said C. D. sell and convey any part of said property to such person or persons, and for such sum or sums of money, and upon such trusts, as said C. D. shall in writing direct.

Sixth. In case of the decease of the said C. D., without devising or making such direction, said trustee shall convey said property to said A. B., or, in case of his decease, to such persons as would be by law entitled thereto, if she had deceased intestate or unmarried.

Seventh. The said E. F. agrees faithfully to execute said trusts, being liable only for his actual receipts or wilful defaults.

It is further agreed that if, at any time hereafter, any estate or property shall descend or vest in said C. D., the said estate or property shall, by the said A. B. and C. D., be conveyed to said E. F., or to such person as may be then trustee of said C. D., to hold in trust for the uses above declared.

In witness whereof, we have hereunto set our hands and seals, this ——— day of ———, A. D. 18—.

Signed, sealed, and delivered
in presence of —.

A. B. (seal.)

C. D. (seal.)

E. F. (seal.)

To be acknowledged.

73. *General release of all demands.*

Know all men by these presents that I, A. B., of —, for and in consideration of the sum of —, (the receipt whereof I do hereby acknowledge,) have remised, released, and forever discharged, and I do, for myself, my heirs, executors, administrators, and assigns, remise, release, and forever discharge the said C. D., his heirs, executors, and administrators, of and from all debts, demands, actions, and causes of action, which I now have in law and equity or which may result from the existing state of things, from any and all contracts, liabilities, doings, and omissions, from the beginning of the world to this day.

In witness, &c.

Signed, sealed and delivered
in presence of —.

A. B (seal.)

74. *Brief form of release.*

July 2, 1857. I, A. B., do hereby release to C. D. all suits, promises, covenants, and demands, which I have or can claim against him.

In witness, &c.

In presence of —.

A. B. (seal.)

75. *Agreements to compound debts.*

Know all men by these presents that the subscribers, creditors of J. B., of, &c., finding that said J. B. is disabled, by losses and otherwise, to pay us our respective debts in full, do severally and respectively agree with said J. B. to accept of him thirty cents for each dollar of our respective demands against him, in full satisfaction of the whole of said demands, provided the said sum of thirty cents for each dollar of our said demands is paid to us or our representatives within six months from the date hereof. And we do further respectively agree, that neither of us, nor any person claiming under us, will commence or prosecute any action or suit in law or equity against said J. B. his goods or estate, within said term of six months, nor at any time afterward, in case said sum of thirty cents for each dollar shall be paid within six months, as aforesaid.

And we do further respectively agree, that if any suit or action shall be commenced or prosecuted against said J. B., his goods or estate, in viola-

tion of this agreement, the said J. B. shall henceforth be forever discharged from all claims and demands of the creditor in whose right any such suit or action shall be brought or prosecuted.

Witness our hands and seals, the — day of —, 18—.

Signed, sealed and delivered
in presence of —.

A. B. (seal.)
C. D. (seal.)
E. F. (seal.)

76. *Agreement not to sue, or letter of license.*

Know all men by these presents, that the subscribers, creditors of J. B. of, &c., do hereby severally and respectively agree with said J. B. that neither of us, nor any other person in our right respectively, shall commence or prosecute any suit or action, in law or equity, against said J. B., his goods or estate, upon any of our respective demands, at any time within one year from the date hereof.

And we do further respectively agree, that if any suit or action shall be commenced or prosecuted against said J. B., his goods or estate, in violation of this agreement, the said J. B. shall thenceforth be forever discharged from all claims and demands of the creditor by whom or in whose right any such suit or action shall be brought or prosecuted.

Witness our hands and seals the — day of —, 18—.

Signed, sealed, and delivered
in presence of —.

A. B. (seal.)
C. D. (seal.)
E. F. (seal.)

77. *Warrant to appear for a plaintiff and prosecute his suit.*

I, A. B., of &c., do hereby desire and authorize C. D., of &c., to appear at (such a court) for me and in my behalf, to prosecute a certain action or plea of —, by me commenced against E. T., &c., and there *as well as at any other court to which the said cause may be carried*, to plead to and pursue the same to final judgment and execution, and for your so doing this shall be to you a sufficient warrant.

Witness my hand and seal this — day of, &c.

*What is printed in italics may be inserted or left out, as the case may require.

78. *Warrant to defend a suit.*

I, E. F., of &c., do hereby desire and authorize C. D., of &c., to appear for me in an action or plea of —, commenced against me by A. B., of &c., to be holden, &c., then and there (*and at any other court to which the said action may be carried*) to plead thereto, and further to do such things therein as he shall judge necessary for my defence in the said action.

Witness, &c.

79. *Warrant from the plaintiff to the sheriff and gaoler, to discharge the defendant.*

To G. L., Esq., sheriff of S., and to the keeper of the common gaol within the said county, J. L., of —, sends greeting. Whereas, J. D., of —, is now in your custody, by virtue of a writ of capias ad satisfaciendum, issued out of the court of —, at —, at the suit of me, the said J. L., for certain damages in the said writ mentioned, for which said damages I have received satisfaction: Now therefore, these are to will and authorize you, and each of you, that you immediately discharge and release the said J. D., of and from the execution aforesaid, and of and from all writs and process whatsoever, at my suit, and of and from all or any restraint and imprisonment, by occasion of any execution, writ or process heretofore charged

against him by me, the said J. L., upon your being paid your fees. And for so doing, this shall be your sufficient warrant.

Given under my hand and seal the — day of —, in the year of our Lord —.

80. *Bill of sale of a registered vessel.*

Know all men by these presents, that I, A. B., of &c., for and in consideration of the sum of —, to me in hand well and truly paid at or before the delivery of these presents, by C. D., of &c., the receipt whereof is hereby acknowledged, have and by these presents do grant, bargain, sell, assign, transfer, and set over to the said C. D., his executors, administrators, and assigns forever, all that good ship or vessel called the —, of the burthen of — tons or thereabouts, now lying in —, together with all and singular her masts, yards, sails, rigging, anchors, cables, boats, tackles, apparel, and appurtenances. Which said vessel is registered in the port of —, in the words following, to wit: [here recite the registry.] To have and to hold the said —, and all other the above bargained premises, to the said C. D., his executors, administrators, and assigns forever. And I, the said A. B., for myself, my heirs, executors, and administrators, do hereby covenant and agree to and with the said C. D., his heirs, executors, administrators and assigns, that I, the said A. B., at the execution of these presents, am the true and lawful owner of the said ship or vessel called the —, and appurtenances, and that I have good right and full authority to sell and dispose of the same, free of all incumbrances and demands whatsoever.

In witness, &c.
Signed, sealed, and delivered
in presence of us.

— —.

81. *Bill of sale of a vessel employed in the coasting trade.*

[As in the preceding one, except in lieu of the registry, recite the enrolment.]

82. *An agreement to be signed by an auctioneer, after a sale of land at auction.*

I hereby acknowledge that A. B. has been this day declared by me the highest bidder and purchaser of [describe the land] at the sum of — dollars, [or at the sum of — dollars — cents per acre or foot,] and that he has paid into my hands the sum of —, as a deposit and in part payment of the purchase money; and I hereby agree that the vendor, C. D., shall in all respects fulfil the conditions of sale hereto annexed.

Witness my hand at —, on the — day of —, A. D. 187—.

J. S., Auctioneer.

83. *An agreement to be signed by the purchaser of lands at auction.*

I hereby acknowledge, that I have this day purchased at public auction all that [describe the land,] for the sum of — dollars, [or for the price of — dollars — cents per acre or per foot,] and have paid into the hands of J. S., the auctioneer, the sum of —, as a deposit, and in part payment of the said purchase money; and I hereby agree to pay the remaining sum of — unto C. D., the vendor, at —, on or before the — day of —, and in all other respects on my part to fulfil the annexed conditions of sale.

Witness my hand the — day of —, A. D. 187—.

A. B.

A person of sound mind, and of the age of twenty-one years, may dispose of his real and personal estate by will, in writing,

signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will. R. S., Ch. 74, § 1.

When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will, is to be distributed as the estate of an intestate. *Ib.* § 2.

A will so executed is valid, until destroyed, altered, or revoked by being intentionally burnt, cancelled, torn, or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil, or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker. *Ib.* § 3.

No will is effectual to pass real or personal estate unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution. *Ib.* § 15.

A devise of land must be construed to convey all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate. *Ib.* § 16.

85. *Commencement of wills.*

Be it remembered that I, A. B., of &c., being of sound and disposing mind, do make, publish, and declare this my last will and testament, in manner and form following, to wit:

In the name of God, Amen.

I, A. B., of E., in the county of C., and state of Maine, being weak in body, but of a sound and perfect mind and memory, blessed be Almighty God for the same, do make, publish and declare this my last will and testament, in manner and form following, viz:

I, A. B., of —, in the county of —, &c., do make and publish this my last will and testament, in manner following:

I, A. B., of E., in the county of C., and state of Maine, being weak in body, but of a sound and perfect mind and memory (for which I have reason to praise God,) do make, publish, and declare this my last will and testament, and herein dispose of all my worldly estate, in manner following, to wit:

86. *Form of will.*

Be it remembered that I, A. B., of —, in the county of —, being weak in body, but of sound and perfect memory, do make and publish this my last will and testament, in manner and form following, that is to say:

First, I order and direct my executor herein named to pay all my just debts and funeral charges, as soon as may be after my decease.

Second, I give and bequeath to my beloved wife, S. B., all my household furniture; all the provision I may have on hand at the time of my decease; one good cow; six good sheep; my bay horse; my chaise and harness, and

three hundred dollars in money; and in the event that my death should happen at a season of the year when the above named stock shall need hay and other fodder, before the same shall again grow, I hereby order and direct my said executor to keep the same for my said wife, free from any expense to her, so long as they may need the same.

Also, I give and devise to my said beloved wife, for and during the term of her natural life, the homestead farm upon which I now live, situated in said E., containing about sixty acres, to have and to hold the same to her and her assigns, with all the appurtenances thereto belonging, for and during the term aforesaid. The aforesaid bequest and devise to my beloved wife is intended to be instead of her dower and distributive share in my whole estate.

Third, I give and bequeath to my three daughters, C. B., H. B., and S. B., the sum of five hundred dollars each.

Fourth, I give and devise to my son, J. B., his heirs and assigns forever, all that tract, or parcel of land, situated in H., in said county, which I bought of L. R., containing about one hundred acres, more or less, bounded as follows: [Here insert, &c.]

Fifth, I give and devise to my son, T. B., his heirs and assigns forever, the house lot and buildings thereon, situated in said E., which I bought of W. H., and now occupied by my said son, T. B.

Sixth, I give, bequeath, and devise to my grandsons, A. B. and C. B., children of my son M. B., deceased, all that tract or parcel of land, situated in D., in the county of S., which I bought of A. P., containing about fifty acres, be the same more or less, bounded, &c.; and also the sum of five hundred dollars, to be equally divided between them; all the aforesaid sums of money I order to be paid in one year after my decease.

Seventh, I give and devise to my two youngest sons, J. B. and F. B., their heirs and assigns, all my real estate situated in —, in the county of —. To have and to hold to them their heirs and assigns forever.

Eighth, I give and devise to my eldest son, B. B., all my homestead farm, situate in —, in the county of —, whereon I now live; to have and to hold the same to him, the said B. B., and his heirs and assigns forever.

Ninth, I give and devise to my daughter, M. B., my farm, situate in —, in the county of —; to have and to hold to my said daughter, M. B., and her assigns, for and during the term of her natural life, without impeachment of waste; and from and immediately after her decease I give and devise the same unto my eldest son and his heirs and assigns forever.

Tenth, I forgive unto L. M., the sum of — dollars, out of the principal sum of — dollars, which he owes me upon bond, dated Jan. —, 187—.

Eleventh, I give to my son, A. B. aforesaid, all the debts that may be owing to me at the time of my decease.

Twelfth, I give and devise to the said A. B., the residue, viz.: two-thirds of my homestead aforesaid; and after the death of my said wife, the other third thereof. To have and to hold to him, his heirs and assigns forever; he paying to my children hereafter named, in one year after my decease, the sums following, viz.: To my son, J. B., the sum of —, and to my daughter, M. B., the sum of —. And after the death of my wife the further sums, as follows, viz.:

Thirteenth, I authorize my executor, with all convenient speed after my decease, to bargain, sell and alien in fee simple all those my lands called —, situate in —.

Lastly, I give, bequeath, and devise to my son, A. B., Jr., his heirs and assigns forever, all the rest, residue, and remainder of my estate, real, personal, and mixed, wherever found and however situated; and I do hereby appoint my said son, A. B., Jr., sole executor of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand, this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

A. B.

Signed, published, and declared by the said A. B., to be his last will and testament, in presence of us, who, at his request, in his presence and in the presence of each other, have subscribed our names as witnesses thereto.

L. M.

P. S.

J. W.

In these general forms any other clauses may be inserted, of which a few examples are added.

87. *Bequest of money to be put at interest, &c.*

Also, I give to my grand-daughters, M. B. and R. B., children of my daughter C. B., the sum of ——— dollars each, to be paid to them respectively at their respective ages of twenty-one years, or days of marriage, which shall first happen; the same to be put out at interest at the direction of my executor, and the interest accruing thereby to be applied to their education and maintenance respectively, until their said respective ages or marriages. And in case either of them shall die before the age of twenty-one years, or marriage, then I give the share of her so dying unto the survivor of them. And if both of my said grand-daughters shall happen to die before attaining the age of twenty-one years or marriage, then I give and bequeath the whole of the said several sums unto ———.

88. *Appointment of a person to manage the estate of a minor.*

I do hereby authorize and direct my said executor, from and after my decease until the aforesaid G. B. shall attain his age of twenty-one years, to manage and improve the estate of the said G. B. by me hereby given him for his use and benefit, and to lease all or any part of his lands, and to lend and place out at interest upon good security, or otherwise improve according to his discretion, all or any part of the monies belonging to or arising from the said estate of the said G. B., and to account for and pay to the said G. B. for all such rents, interest and income as shall arise from the estate hereby given and devised to him, when he shall attain his age of twenty-one years. And my will is, that my said executor shall not be accountable for more of the aforesaid monies or estates than he shall actually receive, or shall come to his hands by virtue of my will, or for any loss which shall happen of the said monies or estates, hereby by me given to the said G. B., if such loss happen without his wilful default and neglect.

89. *Devise of land subject to an annuity.*

I devise unto my grandson, C. B., my farm, situate in ———, containing ——— acres, more or less, called the ——— farm, with the appurtenances: To have and to hold (subject nevertheless to and chargeable with the annuity of sixty dollars, hereinafter mentioned) to him, the said G. B., his heirs and assigns forever. And I do hereby devise to my wife, E. B., and her assigns, during the term of her natural life, an annuity of sixty dollars, free from all taxes and deductions, to be issuing and payable out of the said farm, and to be paid and payable by equal half yearly payments, on the ——— day of ———, and on the ——— day of ———, in each year; the first payment thereof to be on such of said days as shall first happen next after my decease; and I do hereby charge and subject the said farm to and with the payment of the said annuity of sixty dollars accordingly. And in case the said annuity, or any part thereof, shall be unpaid for the space of ——— days next after any of the said days of payment whereon the same ought to be paid as aforesaid, it shall be lawful for my said wife and her assigns into all and singular the premises charged with the said annuity as aforesaid, to enter, and the rents, issues and profits thereof to receive and take, until she be thereby, or by the person who shall then be entitled to the possession of

the premises, paid and satisfied the same and every part thereof, and all the arrears thereof incurred before, and that shall incur during such time as she shall receive the rents and profits thereof, or be entitled to receive the same by virtue of such entry, together with her costs, damages and expenses laid out and sustained by reason of the non-payment thereof.

90. *Devise to a wife in lieu of her dower.*

I devise to my wife, E. B., the house in which I now live, and the buildings appurtenant to the same, and the household furniture of every kind now being in said house, and the following described tract of land, &c. To have and to hold to her, the said E. B., for the term of her natural life, in lieu and in full satisfaction of her dower, and of all her right of dower in and out of all the lands and tenements whereof I shall die seized (or of all her right of dower in and all lands and tenements whereof I now am or have been, or hereafter shall be, seized during my marriage to my said wife.)

91. *Devise of lands in trust.*

Also, I give and devise to N. B., &c., a certain, &c. [Here describe the premises.] To have and to hold to the said N. B. in trust, that the said N. B. shall carry on and improve the same to the best advantage, and yearly and every year pay over to my son, R. B., the clear annual income of said premises, after deducting the necessary expenses of carrying on and improving the same, in such sums and at such times as the said N. B. shall think most beneficial to the said R. B. and his family, during the lifetime of said R. B.; and in case my said son should die leaving children under age, then in trust to carry on and improve said premises, and pay over and apply the clear annual income thereof in manner aforesaid, to and for the support, maintenance, and education of said children, until their respective ages of twenty-one years; and in case the said children or any of them shall arrive at the age of twenty-one years, then in trust to convey and assure to each of said children his equal share and proportion of said estate in fee. But if the said R. B. shall die leaving no children, or if his said children should die under twenty-one years of age, and without lawful issue, then I give and devise the same premises to the said N. B. and his heirs, to his and their sole use and benefit forever.

92.

I give and devise all my estate, real and personal, whereof I may die seized or possessed, to John Doe, of the town of Columbia, and Richard Roe, of the same place, gentlemen: To have and to hold the same to themselves, their heirs and assigns forever, upon the uses and trusts following, namely: In trust to pay all my debts and funeral expenses: secondly, to pay to my wife Jane, upon her sole and separate receipts, the interest, income, and revenue, of all my said estate, during the term of her natural life: and thirdly, upon the decease of my said wife, to convert all my said estate into money, if such a course shall be thought best by my said trustees, and pay to my daughter Jane the one-third part thereof, it seeming to me best to give her so large a share on account of her bodily infirmities and inability to provide for herself, and the remaining two-thirds equally to divide between my four sons, Peter, John, Henry, and Thomas. If either of my children shall, before such division, have died, leaving lawful issue, such issue to receive the parent's share; but if there be no issue, then such share to fall into the general fund, to be divided among the survivors in the manner before directed.

And I hereby give to my said trustees full power and authority to sell any or all of my real estate at private or public sale, and invest the proceeds, or to lease the same as they may deem best for the interest of my family.

And if my said daughter Jane shall not have attained the age of twenty-one

upon the decease of her mother, I hereby nominate, constitute, and appoint my said trustees, guardians of the person and estate of my said daughter Jane during the remainder of her minority, commending her to their fatherly care and protection.

And I hereby nominate, constitute, and appoint my said trustees, John Doe and Richard Roe, executors of this my last will and testament.

93. *Provision for a monument.*

I order and direct my executor herein named to erect a suitable monument at my grave within one year after my decease, not to exceed in value the sum of — dollars, with such inscription thereon as may be ordered by my wife, if living, otherwise by my next of kin.

94. *Form of codicil.*

Whereas I, A. B., of —, have made and duly executed my last will and testament, in writing, bearing the date the — day of —, now I do hereby declare this present writing to be a codicil to my said will, and direct the same to be annexed to and taken as part thereof. I do hereby give and bequeath to C. D., of, &c., the sum of — dollars. And whereas by my said will I did give and bequeath to E. F. the sum of — dollars; now I do hereby revoke the said legacy, and do give unto the said E. F. the sum of — dollars, and no more.

In witness whereof I have hereunto set my hand and seal, the — day —, 187—.

A. B. [L. s.]

Signed, sealed and declared by the above-named A. B. to be a codicil to be annexed to his last will and testament: in presence of us, who, at his request, in his presence, have subscribed our names as witness thereto.

R. S.
W. T.
Y. W.

A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to the provisions of this chapter. R. S. Ch. 74, § 18.

No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken. Ib. § 19.

No nuncupative will can be effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will. Ib. § 20.

96. *Form of a nuncupative will.*

The last will and testament of —, in the county of —, deceased, declared by him by word of mouth in the time of the last sickness of said deceased, and in his usual dwelling, on the — day of —, in the presence of us, who at the time of pronouncing the same were requested by the testator to bear witness that such was his will, and who have subscribed our names as witnesses thereof: My will is that [here insert the very words.]

In witness whereof we have hereunto set our hands, the — day of —, 187—.

A. B.

C. D.

E. F.

97. *Agreement of mortgagor that the mortgagee may have possession of lands mortgaged, for the purpose of foreclosure.*

Be it known that I, A. B., of, &c., do hereby agree that C. D., of, &c., shall enter into possession, and hold for condition broken the following described premises, to wit: [here describe] being the same premises that I mortgaged to said C. D. on the — day of —, 187—.

Dated this — day of —, 187—.

A. B.

98. *Peaceable and open entry upon mortgaged premises, for same purpose.*

I, A. B., hereby certify that on the — day of —, 18—, in presence of C. D. and E. F., I entered openly and peaceably for condition broken upon a tract of land situated in —, in said county of —, containing — acres, bounded, &c., conveyed to me in mortgage by G. H., by his deed dated —, 186—, recorded in — Registry, vol. —, page —, and for the purpose of foreclosing the right in equity of G. H. to redeem the same; and at the same time I publicly declared the purpose and object of my said entry and of the possession so taken.

A. B.

We, C. D. and E. F., severally depose that we were present and witnessed the proceedings stated in the foregoing certificate, and that the facts therein stated are true.

C. D.

E. E.

YORK, ss. —, 187—.

Subscribed and sworn to before me,

J. P., Justice of the Peace.

99. *Notice of Foreclosure.*

Whereas A. B. of —, in the county of —, on the — day of — A. D. 187—, by his deed of mortgage of that date, recorded in O— Registry of Deeds, vol. —, p. —, conveyed to the subscriber a certain lot or parcel of land situate in said —, in said county of —, bounded and described as follows, viz: [here insert description of premises] to secure the payment of a certain note of hand therein described; and as the conditions of said mortgage have been broken, I claim a foreclosure of the same according to the statute in such cases made and provided, and give this notice for that purpose.

C. D.

W—, March 15, 1870.

100. *An agreement between several to purchase an estate, each to pay his proportion of the purchase money, charges, &c.*

Whereas it has been and is hereby agreed, that we, A. B., of —, mer-

chant, and C. D. of —, yeoman, and E. F., of —, housewright, or some one of us on behalf of all, shall purchase that tract of land, situate, lying, and being in —, bounded and described as follows, to wit [here describe the land,] now owned and occupied by —, of —: now, we severally agree, that if any one or more of us shall purchase the said land, that each of us will pay a proportion, to wit, one third of the purchase money, and that all charges and expenses relating thereto shall be borne by us in equal proportions, and that such purchase shall be to us as tenants in common [or as joint tenants] of the said land; provided that the purchase money of the said land do not exceed — dollars, and provided also, that if either one or two of us do not pay his or their said proportion thereof, when demanded or required so to do in writing by the other or others, then it shall be lawful for either or both of the others to pay the same, and to take and hold the share or shares of the said party or parties not paying, to himself or themselves alone.

Witness our hands this — day of —, A. D. 18—.

101. Agreement for the sale of goods, &c., as they shall be appraised.

Articles of agreement made between A. B., of —, and G. D., of —, &c.

It is hereby agreed by the said parties, that all and singular the household goods, furniture and utensils, which are the property of A. B., and contained in and belonging to the dwelling house now in the occupation of the said A. B. [or, contained in the schedule hereunto annexed,] shall, at the joint and equal charge of the said parties, be appraised by E. F. and G. H., on or before the — day of —, when the said E. F. and G. H. shall, in writing by them signed, give in their appraisement to the said parties; and, in case the said appraisers shall differ in such valuation, then they shall choose a third indifferent person as an umpire, to determine the same, whose valuation of the said goods, within three days after his election, shall be conclusive, if signed and given or tendered to the said parties or either of them. And the said A. B. doth covenant with the said C. D., that, immediately after such valuation, made by the said E. F. and G. H., or by such umpire as aforesaid, he, the said A. B., will make an absolute bill of sale, and give possession of all the said goods, furniture, and utensils, unto the said C. D., at the price the same shall be appraised at as aforesaid. And the said C. D. doth hereby covenant with the said A. B., that he, the said C. D., will accept the said goods, at the said price, and, at the time of executing such bill of sale, and delivering possession of the said goods, furniture, and utensils, by the said A. B., will then pay to the said A. B., the sum of money for which the same shall be appraised as aforesaid.

In witness whereof, we have hereunto set our hands and seals, this — day of —, A. D. 18—.

102. An agreement between a master shipwright and his workmen, for building a new ship, &c.

Articles of agreement made between H. C., of, &c., and R. S., of, &c., and W. M., of, &c., of the one part, and J. S., of, &c., of the other part.

Whereas the said J. S. hath contracted with T. C., of, &c., for building the hull of a new ship, of the dimensions contained in their articles of agreement, &c., &c.: now these presents witness that the said H. C., R. S., and W. M., for themselves, their executors, &c., do hereby covenant with the said J. S., his, &c., that they, the said H. C., R. S., and W. M., their, &c., for the considerations hereinafter mentioned, with materials to be provided by the said J. S., at his charge, at his yard in R., aforesaid, shall perform the shipwright's work and workmanship, according to the said recited articles of agreement, for the building of the hull of the said ship, in a substantial

and workmanlike manner, to the content of the said J. S., and as he or his assigns shall appoint from time to time; and will launch the said ship on or about the — day of — next, and clear the launch wherein the said ship shall be built, immediately after launching thereof. And the said J. S., for himself, &c., covenants with the said, H. C., R. S., W. M., their, &c., that he, the said J. S., his, &c., will pay to the said H. C., R. S., and W. M., their, &c., after the rate of — per ton for every ton of the said ship's burthen or tunnage, [carpenter's or other measure, and time and manner of payment as the parties may agree,] within — days after the launching the said ship.

In witness whereof, we, the said [here repeat the names of all the parties] have hereunto set our hands and seals this — day of —, A. D. 18—.

103. *Agreement to hold parts in a cargo.*

MEMORANDUM. That we, the several persons whose names are hereunto subscribed, have agreed to make up the sum of — dollars between us, which is to be invested in the purchase of a cargo of —, as shall be approved by us or a major part of us, to be sent to —, in such ship or vessel as we or the major part of us agree to charter for that purpose; that the said cargo shall be disposed of by G. H., the proceeds of such sale shall be reinvested in the purchase of such goods, wares and merchandise, as the said G. H. shall approve, and be brought to this port of —, in said vessel. Now we, the said subscribers, do hereby severally and respectively, not one for the other, promise and agree to and with the other and others of us, our executors and administrators, that each of us shall and will be concerned and answerable for profit and loss of and in said cargo, according to our respective parts thereof, hereunder subscribed; and that each of us will pay our several proportionable parts of the cost thereof, according to our respective parts subscribed as aforesaid.

In witness whereof, we have hereunto set our hands this — day of —, 18—.

104. *Agreement to hold parts of a ship, to be built.*

We, whose hands and seals are hereunto subscribed, do for ourselves, our executors and administrators, severally and respectively, and not jointly, nor one for the other, nor for the other's act and deed, covenant, promise and agree, to and with A. B., of, &c., his executors, administrators or assigns, by these presents, that each of us will hold and be concerned in the several parts by us respectively subscribed with our names to these presents, of and in a new ship, to be of the burthen of — tons or thereabouts, for the building whereof the said A. B. hath, at our request and with our consent, contracted and agreed with C. D., of —, by articles of agreement, bearing date on, &c., of which ship when built and finished, that each of us respectively will pay our full proportion, according to our parts in said ship hereunder subscribed, of the sum of money to be paid for the building of said ship, at the times and in the manner as the same shall become due by the said contract in that behalf, and likewise of the charge of the outset and fitting the said ship for sea, for such a voyage as the major part of the owners thereof, according to their parts therein, shall agree and think proper.

In witness, &c.

105. *Form of discharge on margin of mortgage deed or its record.*

I, A. B., the within mortgagee (or assignee of this mortgage) hereby acknowledge payment and full satisfaction of this mortgage. May 17, 187—.

Witness.

A. B.

106. *Administrator's sale.*

Notice is hereby given that by virtue of a license from the Hon. —,

Judge of Probate for the county of —, I shall sell at public sale, on the premises in —, in said county, on —, the — day of — next, at — o'clock in the — noon, so much of the real estate of —, late of —, in said county, deceased, as will produce the sum of — dollars, for the payment of his just debts, expenses of sale, and of administration.

S. S., Administrator of the estate of —.

—, May 27, 187—

·107. *Guardian's sale.*

By virtue of a license from the Hon. Judge of Probate for the county of O—, the subscriber, guardian of I. E., C. E., and F. E., will sell at public or private sale, on the premises, on the — day of — next, at — o'clock in the noon, so much of the homestead farm of A. E., late of —, in said county, deceased, belonging to said I. E., C. E., and F. E., as will bring the sum of — dollars.

J. E., Guardian.

—, May 27, 187—.

107. *Form of petition to county commissioners to locate, alter, and discontinue roads by agent of town.*

To the Hon. Co. Commissioners of the county of O—:

The undersigned, agent of —, and duly authorized by a vote of the inhabitants of said town, at a meeting legally held for that purpose, respectfully represents that the public convenience and necessity require alterations, new locations and discontinuances in the highway as now travelled in said town of —, leading from — to —. He, therefore, requests your Honors, after you have caused due notice to be given to view said route, and make such alterations, discontinuances, and new locations, as you may deem expedient and proper; and as in duty bound will ever pray.

Dated at —, this — day of —, A. D. 187—.

W. C., Agent of said —.

108. *Petition to county commissioners for county road.*

To the Honorable County Commissioners, in and for the county of O—.

We, the undersigned inhabitants of — and vicinity, respectfully represent that a county road is wanted, beginning at —, in said town of —, and running to —. We, therefore request you to locate said road or such part thereof, as, in your judgment, the public convenience and necessity require, as in duty bound will ever pray.

Dated this — day of —, A. D. 187—.

109. *Form of petition for increase of damages on location of county road.*

To the Honorable County Commissioners within and for the county of —, at their session next to be holden at —, within and for said county.

The undersigned of —, in said county, respectfully represent that the county commissioners of said county of —, on petition of A. B. and others, at their — term, A. D. 187—, located a county road from — to —, and over and across lands owned (or occupied, as the case may be) by your petitioners, situate in said town of —, and that they (or he) feel aggrieved by the estimate of damages of said commissioners in the premises, they (or he) therefore pray that a committee may be appointed, or a jury summoned to award and determine the amount of damages to which your petitioners are severally entitled in consequence of said location according to the provisions of the statute in such cases made and provided.

Dated this — day of —, A. D. 187—.

A. B.
C. D.

PROMISSORY NOTES.

110. *On time.*

\$1000.

D—, Jan. 1st, 187—.

For value received I promise to pay C. D., or order, one thousand dollars,
in three months from date. A. B.

111. *On demand, with interest.*

\$100.

D—, Jan. 1st, 1871.

For value received I promise to pay C. D., or order, one hundred dollars
on demand, with interest at — per cent. A. B.

112. *With interest annually.*

\$1000.

D—, Jan. 1st, 187—.

For value received I promise to pay C. D., or bearer, one thousand dollars,
six years from date with interest annually at — per cent. A. B.

113. *On time, with interest.*

\$500.

D—, Jan. 1st, 187—.

For value received I promise to pay C. D., or order, five hundred dollars
in sixty days, with interest. A. B.

Witness, — —.

114. *Payable by instalments, with periodical interest.*

\$2000.

D—, Jan. 1st, 187—.

For value received, I promise to pay C. D., or order, two thousand dollars,
in the following manner, viz.:—Five hundred dollars in one year; five
hundred dollars in two years; five hundred dollars in three years; and five
hundred dollars in four years from the date hereof, with interest on all said
sums, payable semi-annually at — per cent. A. B.

Witness, — —.

115. *Payable in stock, with interest.*

\$50.

D—, Jan 1st, 187—.

For value received, I promise to pay C. D. or order, fifty dollars, in stock,
at my residence, with interest at — per cent. A. B.

116. *Note by two persons.*

\$500.

D—, Jan. 1st, 187—.

For value received, we jointly and severally promise to pay C. D. or order,
on demand, five hundred dollars, with interest at — per cent. A. B.

Witness, — —.

E. F.

117. *Note at bank.*

\$150.

D—, Jan. 1st, 187—.

Ninety days from date, I promise to pay C. D. or order, at the First
National Bank, Portland, one hundred and fifty dollars, for value received. A. B.

A. B.

118. *Remarks relating to notes of hand.*

1. A negotiable note is one which is made payable to A. B. or bearer. It is
otherwise when these words are omitted.

2. By endorsing a note is understood, that, the person to whom it is paya-
ble, writes his name on the back of it. For additional security, any other
person may afterwards endorse it.

3. If the note be made payable to A. B. or order (see note 1,) then A. B. can sell said note, provided he endorse it; and the purchaser may lawfully demand payment of the signer of said note, and if the signer, through inability or otherwise, refuse to pay said note, he may lawfully demand payment of the endorser.

4. If the note be made payable to H. B., or bearer, (see note 1,) then the signer only is responsible to any one who may purchase it.

5. If two persons, jointly and severally sign a note, it may be collected by law of either.

6. If no rate of interest is specified in the note, the rate by law will be six per cent. if written with interest.

7. When a note is given, payable in any article of merchandise or property other than money, deliverable on a specified time, such articles should be tendered in payment at said time, otherwise, the holder of the note may demand the value in money.

8. Negotiable notes not witnessed outlaw in six years; those witnessed in twenty years.

9. A note written for value received, *I promise to pay*, and signed by two or more, is a joint and several note.

10. A note should always be written *for value received*.

RECEIPTS.

119. *A general form.*

\$500.

D—, Jan. 1st, 187—.

Received of C. D. five hundred dollars in full of all demands against him.

A. B.

120. *A receipt for money on account.*

\$20.

D—, Jan. 1st., 187—.

Received of C. D. twenty dollars on account.

A. B.

121. *Receipt for money paid on a note.*

\$75.

D—, Jan. 1st, 187—.

Received of C. D. seventy-five dollars, on his note for the sum of one hundred dollars, and dated at Dover, Dec. 20th, 1840.

A. B.

122. *Of papers.*

D—, Jan. 1st, 187—.

Received of C. D. several contracts, and papers, which are described as follows: (here describe the papers,) which I promise to return to said C. D. on demand.

A. B.

123. *For a quarter's rent.*

\$150.

D—, Jan 1st, 187—.

Received of C. D. one hundred and fifty dollars, being one quarter's rent, due this day, for my dwelling house and estate, No. — street, now occupied by said C. D.

A. B.

124. *For money paid by another person.*

\$300.

D—, Jan. 1st, 187—.

Received of C. D. by the hands of E. F., three hundred dollars, in full payment for a chaise, by me sold and delivered to the said C. D.

A. B.

125. *For money received for another.*

\$700.

Received of C. D. seven hundred dollars, it being for the balance of
 account due from said C. D. to E. F.

D—, Jan. 1st, 187—.

A. B.

ORDERS.

126. *Town order.*

\$—.

To —, Town Treasurer, or his successor,—

D—, Jan. —, 187—.

Pay to — or order, — dollars and — cents, it being for —
 for the year 187—.

A. B., } Selectmen
 C. D., } of
 E. F., } D—.

No. —.

127. *An order for goods.*

D—, Jan. 1st, 187—.

Mr. C. D.,—

Pay E. F. or order, twenty-five dollars, in goods from your store, and
 charge

Your obedient servant,

A. B.

128. *An order for money.*

D—, Jan. —, 187—.

Messrs. C. D. & Co.,—

Pay E. F. or order, eleven dollars, and this shall be your receipt for the
 same.

A. B.

129. *Another.*

Mr. C. D.,—

Pay E. F. or order, fifteen dollars, and this shall be your receipt for the
 same.

A. B.

ADDENDA.

NOTE. The following was accidentally omitted. It should have been inserted in Ch. 64, page 249.

ROAD COMMISSIONERS.

1. Towns, at their annual meetings, may elect one or not exceeding five road commissioners. They are to be sworn; and vacancies may be filled at any legal town meeting. Except as hereafter provided, they are to have the powers and be subject to the duties and penalties of surveyors. They may at any time assign the care and oversight of the ways to any of their number; and receive such compensation as the town provides. R. S. Ch. 18, § 60.

2. The assessors are to deliver to such commissioners a rate bill of all highway taxes assessed for the year, with an annexed statement of the prices fixed for labor and materials. The collection of any part of the taxes may be assigned by them to any of their number, who are to notify the persons taxed and require of them the performance of like labor in like manner, as surveyors might. Their certificate to the assessors shall be evidence of notice, and of the neglect of any person who does not perform. Ib. § 61.

3. These commissioners may give notice to non-residents, and to persons absent from town without leaving the name of an agent with the town clerk, or having any agent known to them, of the amount assessed to them, by posting advertisements thereof in two public places in the town. If no person appears and pays within twenty days thereafter, the commissioners may make return of such notice and neglect, as provided in the preceding section. Ib. § 62.

4. The taxes of such delinquents may be collected as other town taxes, by the collector, one of the commissioners, or by a person designated by them to the assessors. Such collector or person is to be sworn and give bond approved by the commissioners for the faithful discharge of his duties. The assessors are to commit lists of such taxes to him with their warrants for collection. He is clothed with the same powers as collectors of town taxes, and is to render his account, and make payment of the amount collected, to the commissioners until the next annual meeting, and after that to the treasurer of the town, who is to have the like powers and be subject to the like obligations, to compel such account and payment as he has in regard to collectors of town taxes. Ib. § 63.

5. Towns may at their annual meeting authorize road commissioners to receive money in payment and allow therefor, when paid before certified as delinquent, such discount from the taxes as the town may determine. When more than one commissioner is chosen, the municipal officers are to name one of them to be chairman, who is to keep the rate bills, a record of money received and paid, and hold the money subject to payment, as the commissioners order. He is to give bond with sureties to the town for the faithful performance of his duties, to be approved by the municipal officers. When only one is chosen, he is to give bond in like manner, and be responsible for the performance of all duties pertaining to the office. Ib. § 64.

For oath of road commissioners see No. 10, on page 246.

FORM OF BOND.

(*Obligation same as No. 2, page 282.*)

The condition of this obligation is such, that whereas said ———, has been chosen a road commissioner for said town for the year A. D. 187—; now, if said ——— shall well and faithfully perform all the duties of his said office then this obligation to be void; otherwise to remain in full force.

Signed, sealed and delivered

in presence of

A. B. (seal.)

C. D. (seal.)

E. F. (seal.)

FORM OF APPROVAL ON BOND.

D——, June ——, 187—.

We hereby approve the within bond.

———, }
 ———, } Municipal officers of ———.
 ———, }

3. *Form of commitment of rate bills of highway taxes to road commissioners.*

To A. M. and L. G., Road Commissioners of the town of —

The following is the list of the persons and of the sums against whose names they are set, at which they are severally assessed, to be expended in labor and materials on the highways and bridges in said town. You are to give a reasonable notice in writing, if required, to each person on your said list, resident in said town, of the sum he is assessed on the said list to the highways and town ways in said town, and also forty-eight hours' notice of the time and places you shall appoint for providing materials and laboring on the same, and notify non-residents and persons absent from town of the amount assessed to them on said rate bills by posting advertisements thereof in two public places in said town, that each person may have opportunity to work thereon in person, or by substitute, or with his oxen, horses, cart, or plow, at the prices affixed by the town to such labor or materials, which are as follows, to wit: [here state the prices voted by the town.] And, in case of payment in money of any sum or sums thus assessed, the same you are to expend, according to your best discretion, in labor or materials for repairing the ways within the town. You are to cause at least two-thirds of the sum committed to you on said list for making and repairing the ways to be laid out and expended before the first day of July next, and the residue before the —. You are to exhibit the said rate bills to the selectmen of said town on the first Monday of July next, and also at the expiration of the term for which you have been chosen, and at those times respectively render an account of all moneys that may have been expended by you on the ways; and also, at the expiration of your term of office, you are to render to the assessors a list of such persons as have been deficient, on due notice, in working out or otherwise paying the highway tax. And, if any money shall remain unexpended in your hands after the expiration of your term of office, you are to pay the same to the treasurer of said town.

Given under our hands this — day of —, 18—.

A. B. }
C. D. } Assessors of —
E. F. }

4. *Form of highway rate bills.*

Names.	Polls.	Poll Tax.	Real Estate.	Personal.	Total.
A. B.	1	\$0.87.	\$4.75	\$3.91	\$9.53.

5. *Notice to a person of the amount of his highway tax.*

To A. B., of C.:

Sir,—You are assessed in the Rate Bills of Highway Taxes committed to me [or us, if to road commissioners, and more than one is chosen by the town] by the assessors of said C., the sum of ——. I [or we, if more than one commissioner] have appointed [give the day and hour] for furnishing labor and materials, at the prices fixed by the town therefor, upon the highways at —, of which this is to give you notice.

Dated at C., June —, 187—.

D. E., Surveyor [Road Commissioner].

NOTE.—The statute does not require highway surveyors to give notice to non-residents, it authorizes road commissioners to do so as provided by Ch. 18, § 62, of the R. S.

6. *Road commissioners' advertisement of non-resident highway taxes.*

NOTICE.

Notice is hereby given that in the rate bills of highway taxes assessed for the year 187—, in the town of —, and delivered or committed to me by the assessors of said town of —, on the — day of —, 187—, are the following named non-residents, and persons absent from said town without leaving the name of an agent with the town clerk of said town, and having no agent in said town known to me, with the amount of highway tax assessed to each, to wit:

Name of Non-Resident or Absentee.	Amount of Tax Assessed.
A. B.	\$10.50
C. D.	5.00

If no persons appear and pay said taxes within twenty days from this date, I shall make return to the assessors of said town of this notice, with my certificate thereon of such neglect as authorized by law.

Dated at —, this — day of —, 18—.

A. M. } Road Commissioners for
L. G. } said town for 18—.

7. *Road commissioners' return of notice and neglect.*

To the assessors of —.

We hereby certify that, on the — day of —, 187—, we posted copies of the within notice or advertisement, as follows: one at the inn of C. D., and one at the post-office in said town of —, being two public places in said town, and that no person has paid the amount of taxes assessed against A. B., C. D., &c., the within named.

Dated this — day of —, 187—.

A. M. } Road Commissioners of said town
L. G. } of —, for 187—.

The warrant to collect delinquent non-resident highway taxes may be the same in form as to the collector of taxes. See page 159, *Form No. 2*.

8. *Form of road commissioners return of delinquent tax list.*

To the assessors of the town of —, for the year 187—.

I hereby render to you a list of such persons as have not worked out or paid their highway taxes on lists committed to us to be worked out in said town, for the year 187—, with the amount of the deficiency of each named on said list hereby rendered, to wit:

Name of Delinquent.	Amount of Deficiency.
A— B—.	\$10.50
C— D—.	5.00

We hereby certify that we demanded said taxes and gave reasonable notice in writing, if required, to each person on said list resident in town, of the amount of his tax, and gave each person forty-eight hours notice, extraor-

dinary casualties excepted, of the times and places appointed for furnishing labor and materials at prices fixed by the town therefor, affording each an opportunity to work with his oxen, horses, cart, or plow, to the amount of his tax, and gave due notice to non-residents and absentees as required by law.

——, May 1st, 187—.

A. M. } Road Commissioners of said town
L. G. } of ——, for 187—.

LEGAL FORMS.

NOTE. The following are a collection of forms by Hon. Ephraim Flint of Dover, Maine, which are inserted in this work by his generous permission :

Return on writs of summons.

P—, ss. October 22nd, 18—. By virtue of the within writ I have summoned the within named A. B. as within commanded, by reading to him this writ (or by giving to him in hand an attested copy of this writ, or by leaving at his place of last and usual abode a true and attested copy of this writ.)

L. M., Deputy Sheriff.

FEES.—Service, ———.

Copy, ———.

Travel 3 miles, ———.

Officer's return when goods are attached.

P—, ss. Oct. 22nd, 18—. By virtue of this writ I have attached as the property of the within named A. B., (here describe the property) and on the ——— day of ——— I gave to him in hand (or left at his place of last and usual abode) a summons for his appearance at court.

L. M., Deputy Sheriff.

FEES.—Service \$

Travel 3 miles

—
\$

Return when real estate is attached.

P—, ss. On the 22nd day of October, 18—, at 20 minutes past 3 o'clock, p. m., by virtue of the within writ, I attached all the right, title, interest, estate, claim and demand of every name and nature, which the within named defendant, A. B., has in or to all and any real estate in said county of P—, and on the 26th day of said October, 18—, I filed in the office of register of deeds for said county of P— a true and attested copy of so much of my return on this writ as relates to the attachment of real estate, together with the names of the parties, the value of the defendant's property that I am therein commanded to attach, the date of the writ, and the court to which the same is returnable.

L. M., Deputy Sheriff.

P—, ss. October 23rd, 18—. I have this day summoned the within named A. B. for his appearance at court, by giving to him in hand (or by leaving at his place of last and usual abode) a summons for his appearance at court.

L. M., Deputy Sheriff.

The copy to be filed with the register of deeds, when real estate is attached, may be as follows: First, make out an exact copy of the return on the writ of the attachment of real estate, including the signature of the officer to the same. Let this copy be attested thus:

A true copy of my return. Attest:

L. M., Deputy Sheriff.

Then add:

The writ mentioned in the above return is dated —, and is returnable to the supreme judicial court to be holden at D—, in and for the county of P—, on the — Tuesday of —, 18—. The parties in said writ are C. D., of —, in the county of P—, plaintiff, and A. B., of —, in the county of P—, defendant, and the value of the defendant's property by said writ commanded to be attached, is the sum of — dollars.

L. M., Deputy Sheriff.

Return when personal property is attached which cannot be immediately removed, by reason of bulk or other special cause.

P—, ss. On the 23rd day of October, 18—, by virtue of this writ I attached as the property of the within named defendant, A. B., (here describe the property attached and the location of the same,) which property, by reason of its bulk, cannot be immediately removed, and on the 27th day of said October, 18—, I filed in the office of clerk of said town of D—, being the town in which said attachment is made, an attested copy of so much of my return on this writ as relates to the attachment, with the value of the defendant's property which I am by this writ commanded to attach, the names of the parties in this writ, the date of said writ, and the court to which it is returnable.

L. M., Deputy Sheriff.

The copy to be filed with the town clerk in case of this kind of attachment, may be as follows:

First make an exact copy of the return on the writ of the attachment including the signature of the officer to the same. Let this copy be attested thus.

A true copy of my return. Attest:

L. M., Deputy Sheriff.

Then add:

The writ mentioned in the above return is dated —, and is returnable to the supreme judicial court to be holden at D—, in and for the county of P—, on the — Tuesday of —, 18—. The parties in said writ are C. D., of —, in the county of P—, plaintiff, and A. B., of —, in the county of P—, defendant, and the value of the defendant's property by said writ commanded to be attached is the sum of — dollars.

L. M., Deputy Sheriff.

Officer's return of an arrest and commitment.

P—, ss. October 24th, 18—. By virtue of this writ I have arrested the body of the within named A. B., and have committed him to our jail in B—, in the county of P—, and I have delivered to the keeper of said jail a true and attested copy of this writ and my return upon the same.

L. M., Deputy Sheriff.

Officer's return when a bail bond is taken.

P—, ss. Oct. 24th, 18—. By virtue of this writ, and for want of goods or estate of the within named A. B., found within my precincts, I arrested the body of said A. B., and upon his tendering to me a good and sufficient bail bond which is herewith returned, I permitted him to go at large.

L. M., Deputy Sheriff.

Bail bond.

Know all men by these presents, that we, A. B., of D——, in the county of P——, as principal, and R. N. and O. S., of D——, in the county of P—— as sureties, are jointly and severally holden and stand firmly bound and obliged unto O. P., of D——, in the county of P——, sheriff of said county of P——, in the full and just sum of five hundred dollars to be paid unto the said O. P. To which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated at D—— the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and —.

The condition of this obligation is such, that whereas the above bounden A. B. has been, and is now arrested by L. M., a deputy sheriff in and for said county, at the suit of the said C. D. of D——, in the county of P——, in a plea of — commenced by said A. B. to be heard and tried before the (here describe the court) next to be holden at D——, within and for the county of P——, on the — day of —, 18—, as by the original writ or process bearing date the 24th day of October, A. D. 18—, (reference thereto being had) more fully appears.

Now, if the said A. B. shall appear and answer to said suit or process and shall abide final judgment thereon and not avoid, then the above written obligation to be void, otherwise to remain in full force and virtue.

Signed and delivered in
presence of O. N.

A. B. [L.S.]
R. N. [L.S.]
O. S. [L.S.]

Bail bonds are given to the sheriff if taken by him or his deputy, otherwise to the officer making the arrest; (R. S. Ch. 85, § 1.) And such bonds are not assignable, nor can an action of debt be maintained upon them by the plaintiff in his own name or the name of the officer; but the remedy of the original creditor upon a bail bond is by writ of scire facias, in his own name. 1 Maine 336, R. S. Ch. 85, § 9. The R. S. Ch. 113, § 15 provides for a bond to the plaintiff, in case of the arrest of the defendant on mesne process in double the sum for which he is arrested, and when such bond is taken the officer's return may be in the form following:—

Return in case of arrest and bond on mesne process.

P——, ss. Oct. 25th, 18—. By virtue of this writ, and for want of goods or estate of the within named A. B. found within my precincts, I arrested the body of said A. B. and upon his tendering to me a good and sufficient bond which is herewith returned, I permitted him to go at large.

L. M., Deputy Sheriff.

Bond to the plaintiff in case of arrest on mesne process.

Know all men by these presents, that we, A. B., of D——, in the county of P——, as principal, and P. N. and O. S., of D——, in the county of P——, as sureties, are jointly and severally holden and stand firmly bound and obliged unto C. D. of D——, in the county of P——, in the full and just sum of five hundred dollars to be paid unto the said C. D., his heirs, executors, administrators, or assigns. To the which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

Sealed with our seals. Dated at D—— the twenty-fourth day of October in the year of our Lord one thousand eight hundred and —.

The condition of this obligation is such, that whereas the above bounden C. D. has been, and is now arrested by L. M., a deputy sheriff in and for said county of P——, at the suit of the said A. B. in a plea of —, commenced by said C. D. to be heard and tried before the (here describe the court) next to be holden at D——, within and for the county of P——,

on the —— day of ——, 18—, as by the original writ or process bearing date the 24th day of October, A. D. 18—, (reference thereto being had) more fully appears.

Now if the said A. B. shall within fifteen days after the last day of the term of the court at which the judgment shall be rendered in said suit (or after the day of the rendition of judgment, if before a trial justice) notify the said creditor, or his agent or attorney to attend at some place in the county of P——, and at a time not more than thirty days, and not less than fifteen days after such notice for the purpose of disclosure and examination under the provisions of the statutes relating to disclosure after judgment when bond has been given to the plaintiff upon the arrest of the defendant on mesne process, and shall at such time and place submit himself to examination, make true disclosure of his business affairs and property on oath, and abide the order of the justices of the peace and of the quorum thereon, in manner provided by law in such case; then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered
in presence of O. N.

A. B., [L. s.]
R. N., [L. s.]
O. S., [L. s.]

P——, ss. We, the undersigned two justices of the peace and of the quorum, in and for said county, do approve of the sureties named in the foregoing bond. I, the said U. V. being chosen by the debtor, and I, the said X. Y. being chosen by the creditor (or by A. S., agent and attorney of the creditor, or by L. M., a deputy sheriff, the creditor unreasonably neglecting to appoint.)

J. P., } Justices of the Peace
O. Q., } and of the Quorum.

Bond of indemnity for attaching property.

Know all men by these presents, that I, C. D. of ——, in the county of ——, as principal, and S. A. of ——, in the county of —— as surety, are holden and stand firmly bound and obliged unto L. M. of ——, in the county of ——, in the full and just sum of two hundred dollars to be paid unto the said L. M., his heirs, executors, administrators or assigns. To the which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and ——.

The condition of this obligation is such, that whereas the said L. M., in his capacity of deputy sheriff in and for the county of P——, by virtue of a certain writ or process, issued in favor of the said C. D. against A. B. dated Oct. 27th, 18—, returnable to the supreme judicial court to be holden at D——, in and for the county of P——, on the —— Tuesday of —— A. D. 18—, has attached, at the request of the said C. D. certain personal property to wit, (here describe the property attached,) shown to the said L. M. by the said C. D. as the property of the said A. B. If therefore, the said C. D., his heirs, executors, or administrators, shall at all times hereafter well and truly indemnify and save harmless the said L. M., his heirs, executors and administrators, and every of them, of and from all suits, damages, expense, trouble and costs whatsoever, whereunto he or they, or any of them may be liable, or obliged by law to pay to any person or persons, by reason of said attachment, or any further intermeddling of said L. M., by virtue of said process; then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered
in presence of N. S.

C. D., [L. s.]
S. A., [L. s.]

Receipt for property attached.

P—ss. October 27th, 18—.

Received of L. M., a deputy sheriff in and for said county the following described property, viz.: —, of the value of one hundred and sixty dollars, which property is attached by the said L. M. upon a writ wherein C. D. is plaintiff, and A. B. is defendant, dated Oct. 27th, 18—, and returnable to the supreme judicial court next to be holden at D—, in and for the county of P—, on the — Tuesday of — next. And I do hereby promise to deliver said goods in like good order and condition as the same are now, inevitable depreciation by keeping and otherwise excepted, whenever the same shall be demanded by said L. M. or other officer authorized to demand the same, by virtue of an execution in said suit. O. S.

Officer's return on a replevin writ.

P—, ss., 18—. By virtue of this writ I this day took from the within named C. D., the plaintiff, a bond to the within named A. B., the defendant, with sufficient sureties in the sum of — dollars, being twice the value of the goods and chattels within named, with condition to prosecute the said replevin to final judgment, and to pay such damages and costs as the said A. B. shall recover against him, and also to return and restore the same goods and chattels in like good order and condition as when taken, in case such shall be the final judgment, which bond I herewith return. And thereupon I replevied said [here describe the property] and delivered the same to the said C. D., and summoned the said A. B. to appear at court, as within directed, by reading to him that writ, in his presence and hearing (or by delivery to him in hand, or leaving at his place of last and usual abode, a true and attested copy of this writ).

L. M., Deputy Sheriff.

Replevin bond.

Know all men by these presents that we, C. D. of —, in the county of —, as principal, and R. S. and T. Y. of —, in the county of —, as sureties, are holden and stand firmly bound and obliged unto A. B., of —, in the county of —, in the full sum of — dollars; to be paid to the said A. B., his executors, administrators, or assigns. To which payment well and truly to be made we hereby bind ourselves and our respective heirs, executors, and administrators, jointly and severally, in the whole and for the whole, firmly by these presents.

Sealed with our seals. Dated the — day of —, Anno Domini one thousand eight hundred and —

The condition of the above obligation is such, That whereas the said C. D. hath this day commenced against the said A. B. an action of replevin for

[here describe the property replevied.]

which he says the said A. B. hath unlawfully taken.

Now, therefore, if the said — shall prosecute the said replevin to final judgment, and pay such damages and costs as the said — shall recover against him; and also return and restore the same goods and chattels in like good order and condition as when taken, in case such shall be the final judgment; then the said obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered
in presence of R. Y.

C. D. (L. S.)
F. S. (L. S.)
N. Y. (L. S.)

Officer's return on a trustee writ.

P—, ss. Oct. 27th, 18—. By virtue of this writ, I attached a chip as the property of the within named A. B., and on the same day, at fifteen minutes before eleven o'clock in the forenoon, summoned the within named J. H. to

appear at Court as within directed, by reading to him this writ in his presence and hearing (or by leaving at his last and usual place of abode a true and attested copy of this writ), and on the — day of —, 18—, I summoned the said A. B. for his appearance at court as within directed, by reading to him this writ in his presence and hearing (or by leaving his last and usual place of abode a true and attested copy of this writ).

L. M., Deputy Sheriff.

Trustee answer.

STATE OF MAINE.

P—, ss. Supreme Judicial Court, — Term, A. D., 18—.

C. D. vs. A. B. and J. K., Trustee.

And now the said J. K. comes and defends, &c., when, &c., and says that he ought not to be adjudged the trustee of the said defendant in this action, because he says, that at the time of the service of the writ in this case upon him, to wit, on the — day of —, A. D. 18—, he had not in his hands and possession any goods, effects, or credits of the said defendant.

Whereof he pray judgment and for his costs.

Interrogatories propounded to said trustee.

1. Had you, at the time of the service of the writ in this case upon you, any goods, effects, or credits of the said A. B. in your hands and possession?

Answer :

Petition for injunction upon a bank.

To the Honorable J. C., one of the Justices of the Supreme Judicial Court of the State of Maine.

The undersigned, R. G. and W. C., Bank Commissioners of the State of Maine, complain and respectfully represent to your honor, that they have examined into the affairs of the — Bank in —, in the county of P—, and that from such examination the said Commissioners are of opinion that said bank is insolvent, that its further progress would be hazardous to the public and to those having funds in its custody, that it has exceeded its powers and has failed to comply with all the rules, restrictions and conditions provided by law. They, the said Commissioners, therefore apply to your honor to issue an injunction to restrain said bank, its officers and agents in whole from further proceedings with its business until hearing is had. Dated at —, this twenty-second day of December, A. D. 18—.

R. G. } Bank
W. C. } Commissioners.

And the said Bank Commissioners make the following specifications as a part of the foregoing complaint and application.

1st. That said — Bank has put into circulation a larger amount of bills than it is authorized by law to do.

2d. That said Bank has not in its own vaults in specie five per cent of its capital stock as is required by law.

3d. The books of said banks do not show its true condition.

4th. That said Bank has suffered its bills to go into circulation without proper and adequate security therefor.

5th. That the assets of said Bank and its bills have been improperly used in various and repeated instances.

R. G. } Bank
W. C. } Commissioners.

Bond where error is brought and supersedeas granted.

Know all men by these presents that C. D. of —, in the county of —,

as principals, and R. N. and O. S. of —, in the county of —, as sureties, are holden and stand firmly bound and obliged unto A. B. of —, in the county of —, in the full and just sum of —, to be paid unto the said A. B., his executors, administrators or assigns. To the which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated this — day of —, in the year of our Lord one thousand eight hundred and —.

The condition of this obligation is such, that whereas at the — court holden —, within and for the county of P—, on the — day —, A. D. 18—, the said A. B. recovered judgment against C. D. for the sum of — dollars and — cents, debt or damage, and — dollars and — cents, cost of suit, upon which said judgment execution has issued; and whereas the said C. D. has sued out a writ of error for the reversal, recall, or the correction of the judgment aforesaid, returnable to the supreme judicial court to be holden at D—, within and for the county of P—, on the — Tuesday of —, A. D. 18—, and has procured a writ of supersedeas to stay and supersede execution upon said judgment.

Now if the said — shall prosecute his suit upon said writ of error with effect, and shall satisfy such judgment as shall be rendered therein agreeably to the provisions of law, then this obligation shall be void.

Signed, sealed and delivered
in presence of A. N.

C. D. (seal.)
R. N. (seal.)
O. S. (seal.)

Petition for writ of review.

To the Hon. Justices of the Supreme Judicial Court to be holden at D— in and for the county of P—, on the — Tuesday of —, A. D. 18—.

Respectfully represents A. B. of —, in the county of —, that C. D. of —, in the county of —, on the — day of —, A. D., 18—, sued out a writ of attachment against your petitioner returnable to the — court to be held at D—, in and for the county of P—, on the — Tuesday of —, A. D. 18—, when and where said action was duly entered, and continued to the — term of said court, A. D., 18—, at which last-named term of said — court judgment was rendered in favor of said C. D. against your petitioner for the sum of — debt or damage and costs of suit taxed at —, upon which said judgment a writ of execution issued on the — day of —, 18—, that said judgment is wrong and erroneous, and your petitioner claims that he is damnified thereby the sum of —, and that it would be just and reasonable that a review in said action be granted for the reasons following, viz.:—

[Here state all the reasons for asking for a review, and the names of all witnesses by whom facts are to be proved.]

Your petitioner therefore prays that a review may be granted in said action and that a writ of supersedeas may issue to stay execution issued upon said judgment, and also that the said C. D. be notified of the pendency of this petition, and to appear and answer to the same at the supreme judicial court next to be holden at D—, in and for the county of P—, on the — Tuesday of —, A. D. 18—, should he see cause. Dated at —, the — day of —, A. D. 18—.

A. B.
P—, ss. —, A. D. 18—. Personally appeared the above named A. B. and made oath to the truth of the statements contained in the foregoing petition.
J. P., Justice of the Peace.

Bond where supersedeas is granted in case of petition for review.

Know all men by these presents that I, A. B., of —, in the county of —, as principal, and R. N. and O. S. of —, in the county of —, as

sureties, are holden and stand firmly bound and obliged unto C. D. of —, in the county of —, in the full and just sum of —, to be paid unto the said C. D., his executors, administrators, or assigns. To the which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the — day of —, in the year of our Lord one thousand eight hundred and —.

The condition of this obligation is such, that whereas at the Supreme Judicial Court, holden at D—, within and for the county of P—, on the — day of —, A. D., 18—, the said C. D. recovered judgment against the said A. B. for the sum of — dollars and — cents, debt or damage, and — dollars and — cents, cost of suit, upon which said judgment execution has issued; and whereas the said A. B. has petitioned the supreme judicial court to grant a review of said action, and a writ of supersedeas to stay said execution issued upon said judgment, which supersedeas has been granted upon the condition that the said A. B. give to the said C. D. a bond with sureties to be approved by — in double the amount of the damages and costs above named.

Now, if the said A. B. shall pay said amount — if said petition be denied, or the amount of final judgment on review, should it be granted, with interest thereon at the rate of twelve per cent from the date hereof to the time of final judgment, should such judgment be against the said A. B., then this obligation shall be void, otherwise remain in full force and virtue.

Signed, sealed and delivered

in presence of

R. H.

A. B. (seal.)

R. N. (seal.)

O. S. (seal.)

Petition for writ of certiorari.

To the Hon. Justices of our Supreme Judicial Court, next to be holden at D., in and for the county of P., on the — Tuesday of —, A. D. 18—.

Respectfully represents A. B., of —, in the county of —, that in the record and proceedings as well as in the adjudication upon a petition of C. D. and twenty-five others to the county commissioners of said county of P— representing that [here set forth the petition] which petition was entered before said county commissioners of said county, at their — term, 18—, and a return of their doings thereon made at their — term, A. D. 18—. Manifest error hath happened, that is to say, the following errors: [Here set forth the errors.]

The said A. B. therefore prays that a writ of certiorari be issued to said county commissioners commanding them that the full record of their proceedings upon said petition, with all things touching the same, fully and entirely as the same remain before them, by whatever name the parties are called therein, be sent before the Justices of our supreme judicial court, that said court may thereupon cause to be done what of right and according to law ought to be done.

A. B.

Petition for mandamus.

To the Hon. Justices of the Supreme Judicial Court to be holden at D—, in and for the county of P—, on the — Tuesday of — next.

A. B. of —, in the county of P—, respectfully represents that [here set forth the causes why the writ of mandamus should be granted].

The said A. B. therefore prays that a writ of mandamus be issued from the Supreme Judicial Court to said —, commanding — to [here set forth what the petitioner wishes the respondent to be required to do], and that a rule of court be issued to said —, commanding — to appear before the justices of said court and show cause, if any — ha—, why the prayer of this petition should not be granted.

A. B.

P—, ss. —, A. D., 18—. Personally appeared the above named A. B., and made oath that the foregoing petition is true, according to his best knowledge and belief.

Before me,

R. Y., Justice of the Peace.

Information in the nature of quo warranto and rule of court thereon.

STATE OF MAINE.

P—, ss. At our Supreme Judicial Court, begun and holden at D—, within and for the county of P—, on the — Tuesday of —, A. D. 18—.

Be it remembered that —, attorney for the State of Maine within and for the county of P—, who in this behalf prosecutes (at the relation of —) comes into court here, and upon his oath of office, gives said court to understand and be informed that —, of —, in the county of —, for the space of — now last past, hath used and exercised the office of —, without any warrant or lawful authority therefor; which said office, and the powers, authorities and emoluments to that office appertaining, the said —, during all the time aforesaid, hath usurped, and still doth usurp upon the government of said State of Maine, to the great damage and prejudice of the lawful authority thereof. Whereupon the said attorney for the State prays the advice of the court here in the premises, and for due process of law against the said —, in this behalf to be made, to answer to the State of Maine by what warrant he claims to have, use, exercise, and enjoy the aforesaid office.

By —, Attorney.

Petition by a subsequent attaching creditor.

P—, ss. Supreme Judicial Court, — term, A. D., 18—.

A. B. of —, in the county of P—, plaintiff,
versus

C. D. of —, in the county of P—, defendant.

And now, before final judgment in said cause, E. F. of —, in the county of —, comes and respectfully represents:

That upon the writ issued in this cause, certain real and personal estate of the said C. D., the defendant, was attached as particularly appears by the return of the officer indorsed thereon; That your petitioner claims title to said property as a subsequent attaching creditor of the said C. D. by virtue of a writ against the said C. D., duly issued and dated —, returnable to the Supreme Judicial Court in and for the county of P—, on the — Tuesday of A. D., 18—, in which your petitioner is plaintiff, and which is now pending in said court, upon which writ the said property was also attached on the — day of —, A. D., 18—. That the claim of your petitioner, as set forth in his said writ against said C. D. is just and legal, and that the sum of — dollars was at the time of the commencement of said action due and owing from the said C. D. to him. And that your petitioner verily believes that the sum demanded in the present suit by the said A. B. against the said C. D. was not justly due nor payable, when the said action was commenced. Wherefore the said E. F. prays that leave may be granted to him, to defend said prior suit of the said A. B. against the said C. D. E. F.

P—, ss. —, A. D. 18—. Then personally appeared the above named E. F., and made oath that he believes the facts set forth in the foregoing petition, by him signed, to be true.

Before me,

J. P., Justice of the Peace.

Bond by a subsequent attaching creditor.

(The obligation to be like other bonds.)

The condition of the above obligation is such, that whereas the said E. F. (a subsequent attaching creditor) has petitioned the Supreme Judicial Court now holden at D—, in and for the county of P—, for leave to defend the prior suit of the said A. B. against C. D. of —, in the county of P—, on the writ in which suit has been attached certain real and personal property,

to which the said E. F. claims title as a subsequent attaching creditor of the said C. D. by virtue of a writ wherein the said E. F. is plaintiff and the said C. D. is defendant, duly issued and dated —, returnable to the supreme judicial court in and for the county of P—, on the — Tuesday of —, A. D. 18—, and now pending in said court. And whereas the said E. F., for the reasons set forth in said petition, has been admitted to defend said prior suit of the said A. B. against the said C. D. and has been required by the court to give bond to said A. B., with sufficient surety, to pay to the said A. B., plaintiff in said prior suit all damages and costs occasioned by such defence.

Now, if the said E. F. shall pay all such damages and costs as are last above mentioned, then this obligation shall be void, otherwise remain in full force.

Signed, sealed and delivered
in presence of R. Y.

E. F. (seal.)
R. N. (seal.)
O. S. (seal.)

Complaint for flowage.

To the Honorable Justices of the Supreme Judicial Court next to be holden at D—, in and for the county of P—, on the — Tuesday of — next.

Respectfully complains A. B. of —, in the county of —, that C. D. of —, in the county of —, during the last three years, to wit, from the — day of —, A. D. 18—, to the day of the date hereof, maintained a certain water-mill and * a dam to raise water for working it, upon and across a certain stream not navigable, called — stream, in —, in said county of P—, and that by means of the maintenance of said water-mill and dam by said C. D., the following described tract of land, of the complainant, situated in the town of —, in said county of —, and bounded as follows, viz: (here describe the land flowed) has been overflowed during the three years last past to the damage of the complainant, as he says, the sum of — dollars.

Wherefore the said A. B. prays, that it may be ascertained and determined in the manner provided by law, what is the amount of his yearly damage by reason of said dam and flowage, how far such flowage may be necessary upon the land of said A. B. and what portion of the year said land ought not to be flowed; and that such other proceedings may be had as law and justice may require.

Dated this — day of —, in the year of our Lord one thousand eight hundred and —. A. B.

If the complaint is for damage by reason of the diversion of a stream from the natural channel, the form of the complaint may be as in the last to *, and then as follows:—

—a canal, whereby is diverted from its natural channel to said mill, the water of a certain stream not navigable, called — stream in —, in said county of P—, and that by means of the diversion of the water of said stream, by such canal, the following described tract of land of the complainant situated in the town of —, in said county of P—, and bounded as follows, viz: (here describe the land and property injured) has been injured during the three years last past, to the damage of the complainant as he says the sum of — dollars. Wherefore the said A. B. prays that it may be ascertained and determined in the manner provided by law, what is the amount of his yearly damage by reason of the diversion of the water of said stream, and what portion of the year the water of said stream ought not to be diverted, and what quantity of water may be diverted from the land of the said A. B. and that such other proceedings may be had, as law and justice may require.

Dated at —, this — day of —, in the year of our Lord one thousand eight hundred and —. A. B.

Complaint of a kindred or town for support of a pauper.

To the Honorable Justices of the Supreme Judicial Court next to be holden

at — in and for the county of —, on the — Tuesday of — A. D. 18—, respectfully represents (here insert as complainant the name and residence of the kindred and his relationship to the person supported, or the town as complainant as the case may be) that A. B., a resident of the town of —, in said county of —, and having a legal settlement therein, being poor, destitute and unable to procure his support by his own means or labor, has received relief and support from (here insert the source of relief, the name of the kindred complaining or of the town, as the case may be) during six months last past, that the said A. B. is likely to so continue poor, destitute, and in need of support beyond his own means, and that C. D., of —, in the county of —, is (father, mother, grandfather, grandmother, child, or grandchild, as the case may be) by consanguinity of the said A. B., and is of sufficient ability to (wholly or in part as the case may be) provide for the support of said A. B., but has heretofore refused and still neglects and refuses so to do. Wherefore the said (here insert the name of the complainant) prays that the court assess and apportion a reasonable sum upon said (here insert the name of the kindred against whom the complaint is made) for the support of the said A. B. to the time of such assessment, and that payment thereof is necessary) be enforced by warrant of distress; and also that the court assess and apportion upon the said (here insert the name of the respondent) a reasonable and sufficient sum for the future support of the said A. B. to be paid quarterly until further order of court, and direct with whom of the kindred consenting thereto, and for what time the said A. B. may dwell, agreeably to the provisions of the statute, in such case made and provided.

Dated the — day of — A. D. 18—.

Signature of complainant.

The time when such complaint is filed should be certified thereon by the clerk.

Libel for divorce.

To the Honorable Justices of the Supreme Judicial Court next to be holden at D—, in and for the county of P—, on the — Tuesday of — next.

H. D. of — in and for the county of P—, wife of C. D., now resident in —, respectfully shows that she was married to the said C. D. on the — day of — A. D. 18—, at —, in the county of —, by —; that she and her said husband thereafterwards and until the — day of — A. D. 18—, lived together as husband and wife at —, and that she has ever been faithful to her marriage obligations; but the said C. D. being wholly regardless of the same (here set forth the conduct of the husband for which a divorce is claimed.) And your libellant further represents that a divorce from the bonds of matrimony between her and her said husband would be reasonable and proper, conducive to domestic harmony and consistent with the peace and morality of society, and therefore prays that such divorce may be decreed by this court, and that the custody and care of her minor children, to wit, (here name the children) may be decreed to her, and such other decrees and orders may be made by the court as justice may require.

H. D.

The clerk should make a certificate upon each libel of the time when it was received and filed in his office.

Petition for partition.

To the Honorable Justices of the Supreme Judicial Court next to be holden at D—, in and for the county of P—, on the — Tuesday of — next:

Humbly shows A. B. of —, in the county of P—, that he is seized in fee simple and as tenant in common of and in certain real estate (here

describe the estate) to wit, is so seized of one undivided tenth part thereof, with C. D. who is so seized of two undivided tenth parts thereof, and with certain other persons unknown to your petitioner; that he is desirous of holding his said interest in severalty, and therefore prays that notice to all persons interested may be ordered, commissioners appointed, and his said interest set out to him to be held in fee and severalty.

Dated at — the — day of —, A. D. 18—.

A. B.

Petition for enforcement of a lien.

To the Honorable Justices of the Supreme Judicial Court next to be holden at —, in and for the county of —, on the — Tuesday of — next.

Respectfully represents A. B. of —, in the county of —, that on the — day of — A. D. 18—, the following named personal property owned by C. D. of —, in the county of (or the owner of which is unknown as the case may be) came into the hands and possession of your petitioner and have ever since so remained, to wit, (here particularly describe the property upon which the lien is claimed) that your petitioner claims to have a lien upon said property to the amount of — dollars and — cents created in the manner specified, viz: (here state how the lien was created.) Your petitioner therefore prays for process to enforce his said lien, and that said property may be sold for the purpose of discharging his claim thereon by virtue of his said lien and his legal.

Dated at — the — day of —, A.D. 18—.

A. B.

See R. S. Ch. 91, § 39 to 46.

Petition for costs on failure of a plaintiff to enter his action.

STATE OF MAINE.

P—, ss. To the Honorable Justices of the Supreme Judicial Court, began and holden at D— in and for the said county, on the — Tuesday of — A. D. 18—.

Complains A. B. of —, in the county of —, against C. D. of —, in the county of —, for that the said A. B. was summoned at the suit of the said C. D. to appear before the Justices of our Supreme Judicial Court to be holden at —, in and for said county of —, on the — Tuesday of —, A. D. 18—, but the said C. D. has failed to enter and prosecute his said action, but has discontinued the same.

Wherefore the said A. B. prays judgment for his costs in this behalf.

By S. H., attorney.

Petition for affirmation of judgment.

STATE OF MAINE.

P—, ss. To the Honorable Justices of the Supreme Judicial Court, began and holden at —, within and for the county of P—, on the — Tuesday of —, A. D. 18—.

Respectfully represent A. B. of —, in the county of —, that at a justice court, holden at —, within and for said county of P—, on the — day of —, 18—, by J. P., Esquire, one of the trial justices in and for said county, he recovered judgment against C. D. of —, in and for said county of —, for the sum of — dollars and — cents debt or damage, and costs of suit taxed at — dollars and — cents, from which judgment the said C. D. appealed to this court, but neglected to enter and prosecute his said appeal and to produce at this court the necessary copy of a record, writ, papers and documents therefor. Wherefore the said A. B. pray the judgment of said justice court may be affirmed with additional damages and cost.

By S. H., his attorney.

P—, ss. — A.D. 18—. Personally appeared the above named — and made oath to the truth of the statement in the above complaint.

Before me,

J. P., Justice of the Peace.

Petition for an action of a former term to be recorded.

To the Honorable Justices of the Supreme Judicial Court, began and holden at D—, within and for the county of P—, on the — Tuesday of — A. D. 18—.

Respectfully represents A. B. of —, in the county of —, that at the — term of this court in this county A. D. 18—, he recovered judgment against C. D. of —, in the county of —, and that the papers and documents necessary to enable the clerk of this court to make up and enter the judgment, and to complete the record of said case, were not filed within three months next after said judgment was ordered as appears by a memorandum of the fact made by said clerk on the record, but the same are now on file. Wherefore your petitioner prays that the court will order the said judgment to be entered up, and recorded among the records of this term.

By S. H., his Attorney.

Bond on taking out execution against an absent defendant, with a penal sum of twice the amount of damages and costs.

(The obligation to be as in other bonds.) •

The condition of the above obligation is such that whereas the said — by the consideration of the Justices of the Supreme Judicial Court holden at —, in and for the county of —, on the — Tuesday of —, A. D. 18—, recovered judgment against the said — for the sum of — damages and costs of suit taxed at —, the said — having been absent from the state at the time of the service of the writ in said case, and it not appearing that he has returned, or has had actual notice of said suit; and the plaintiff having caused notice thereof to be given according to the order of court, and having recovered said judgment upon default of said absent defendant, is desirous to take out execution thereon.

Now, therefore, if the said plaintiff shall pay the amount so recovered, if said judgment shall be reversed upon a review to be brought by the original defendant at any time within one year after original judgment, or so much of the amount first recovered as shall be recovered back upon such review, then this obligation shall be void, otherwise remain in full force.

Signed, sealed, and delivered
in presence of —.

—, [L. S.]
—, [L. S.]

R. S. Ch. 82, § 3, 4, 5.

Subpœna duces tecum.

P—, ss. To R. N. of —, in the county of —.

Greeting.

You are hereby required in the name of the State of Maine to make your appearance before the Justice of the Supreme Judicial Court next to be holden at D—, within and for the county of P—, on the — Tuesday of —, to give evidence of what you know relating to an action or plea of —, then and there to be heard and tried betwixt A. B., of —, in the county of —, plaintiff, and C. D. of —, in the county of —, defendant. And you are also required to bring and produce in court at the time and place aforesaid (here state what the witness is required to bring into court.)

Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided.

Dated at — the — day of —, in the year of our Lord one thousand eight hundred and —.

E. F., Clerk,

FORMS OF PROCLAMATION BY CRIERS OF COURTS.

For opening court.

CRIER.—All persons that have anything to do before the Honorable Justice of the Supreme Judicial Court now held at D—, within and for the county of P—, may come forth and declare it and they shall be heard.

For adjournment on time.

CRIER.—All persons that have anything further to do before the Honorable Justice of the Supreme Judicial Court now held at D—, within and for the county of P—, may hence depart and give their attendance at this place this afternoon at 2 o'clock, to which time and place this court is adjourned.

Preliminary proclamation.

If any persons have any thing further to do before the Honorable Justice of the Supreme Judicial Court now held at D—, within and for the county of P— let them come forth and declare it, as the court is about to be adjourned without day.

Adjournment without day.

All persons that have anything further to do before the Honorable Justices of the Supreme Judicial Court now held at D—, within and for the county of P—, may hence depart and give their attendance upon a new summons, as this court is adjourned without day.

Proclamations following the opening of court.

CLERK.—Mr. Crier, make proclamation for silence during prayers.

CRIER.—All persons are commanded to keep silence during prayers.

CLERK.—Mr. Crier, make proclamation for the Justice of the Peace for the county of P— to return to their recognizances.

CRIER.—Justices of the Peace for the county of P— return all recognizances by you taken, returnable to this court, that the court may proceed thereon

CLERK.—Mr. Crier, make proclamation for the coroners of the county of P— to return all writs, precepts, and inquests by them taken, returnable to this court.

CRIER.—Coroners of the county of P—, return all writs and precepts to you directed, and all inquisitions by you taken, returnable to this court, that the court may proceed thereon.

CLERK.—Mr. Crier, make proclamation for the sheriff of the county of P— to return all writs and precepts by him served, returnable to this court, together with his calendar and a list of prisoners in his custody.

CRIER.—Sheriff of the county of P—, return all writs and precepts to you directed, returnable to this court, together with a calendar of the prisoners now in your custody, that the court may advise thereon.

CLERK.—Mr. Crier, make proclamation for the grand jurors to answer to their names.

CRIER.—Ye good men of the county of P— who have been summoned to appear here this day to serve on the grand inquest for the body of said county, answer to your name at the first call, upon pain and penalty of what shall fall thereon.

Clerk requests the grand jurors to answer to their names as they are called, and come forward and take the left of the court, and also requests the crier to count as they answer.

A sufficient number of the grand jurors being present, the clerk makes out an alphabetical list of their names, and then calls the first two on the list, and administers to them the following oath, viz :

"You, as grand jurors of the inquest of the body of the county of P——, do solemnly swear that you will diligently enquire, and true presentment make of all such matters and things as shall be given you in charge. The States' counsel, your fellows' and your own, you shall deep secret. You shall present no man for envy, hatred or malice; neither shall you leave any man unrepresented, for love, fear, favor, affection or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding." So help you God.

After this oath is taken by the first two, (who will rise on being called) the remainder of the jurors, in such divisions as the court directs, five or more at a time are called up in like manner and the following oath is administered to them, viz: "The same oath which your fellows have taken on their part, you, and each of you, shall well and truly observe and keep." So help you God.

CLERK.—Mr. Crier, make proclamation for silence while the court is charging the grand jurors.

CRIER.—All persons are commanded to keep silence whilst the charge is given to the grand jury upon pain of imprisonment.

CLERK.—Mr. Crier, make proclamation for information.

CRIER.—If any person can inform the justices of this court, States' attorney, or this inquest, of any treason, murder, felony or other misdemeanor, done or committed within the body of this county, let him come forth and declare it, and he shall be heard.

CLERK.—Mr. Crier, make proclamation for the traverse jurors to answer to their names.

CRIER.—Ye good men of the county of P—— who have been summoned to appear here this day to serve on the jury of trials, answer to your names at the first call, upon pain and penalty of what shall fall thereon.

Clerk requests the jurors to answer to their names as they are called and come forward and take the right of the court, and directs the crier to count as they answer.

Twelve having answered to their names, arranged in alphabetical order, the clerk calls the first two on his list and administers to them the following oath, viz:

"You and each of you swear, that in all causes betwixt party and party that shall be committed to you, you will give a true verdict therein, according to the law and evidence given you." So help you God.

The same oath is administered to the other jurors in such divisions as the court directs, five at a time, or three, three, and then four at a time.

If any juror has conscientious scruples in taking an oath, he is allowed to "affirm," &c., under the "pains and penalties of perjury."

The clerk informs this jury that they will constitute the first jury during the term of court, and as such will be designated; and then proceeds to call the second jury, requesting them to take the left of the court. The same rules in all respects are to be observed in impaneling and swearing the second jury as the first. After administering the oath to this jury the clerk informs them that they will constitute the second jury during the term of court, and as such will be designated.

The same oath is then administered to the remaining number of jurors, who are informed by the clerk that they will act as supernumeraries, and are expected to remain in court, as they are liable to be called upon at any moment during the term.

Form of taking a verdict.

CLERK.—Gentlemen of the jury, have you agreed on a verdict?

(Foreman answers and clerk reads the verdict.)

CLERK.—Gentlemen of the jury, hearken to your verdict as the court hath recorded it.

(Clerk reads verdict again.)

CLERK.—So say you Mr. Foreman, so say you all gentlemen.

Proclamation for nonsuit.

A. B., A. B., A. B., come into court and prosecute your action against C. D., or you will be nonsuited C. D.

For default.

C. D., C. D., C. D., come into court and make answer to A. B., or your default will be recorded.

For a principal to answer to his recognizance.

CLERK.—Mr. Crier, call A. B. to come into court and save himself and bail.

CRUER.—A. B., A. B., A. B., come into court and save yourself and bail, or your default will be recorded.

For bail to bring in the principal.

CLERK.—Mr. Crier, call C. D. to come into court and bring in E. F., whom he engaged to have here this day.

CRUER.—C. D., C. D., C. D., come into court and bring in E. F., whom you engaged to have here this day, or your default will be recorded.

For discharging a recognizance.

CRUER.—If any person has ought to say why E. F., who stands bound by recognizance to appear here this day, should not be discharged, let him come forth and declare it, and he shall be heard.

Same second time.

Same third time, only instead of "and he shall be heard" say "or he is discharged."

For partition of real estate.

CRUER.—If any person has ought to say why the petition of A. B. for partition should not be granted, let them come forth and declare it, and they shall be heard.

Forms in criminal trials not capital.

CLERK.—A. B. rise and hearken to an indictment found against you by the grand inquest for the body of this county.

(*Read the indictment.*)

CLERK.—A. B. what say you to this indictment, are you guilty thereof, or not guilty?

(*Record the plea.*)

CLERK.—Are you ready for trial?

CLERK.—A. B., you are now placed at the bar to be tried. These good men whom I shall call are to pass between you and the state upon your trial. If you would object to any of them you will do it as they are called, and before they are sworn.

Call the first two jurors and administer to them the following oath, viz:

"You swear that you will well and truly try the issue between the state and the defendant according to your evidence."* So help you God.

The same oath may then be administered to the other jurors in the order of three, three and four at a time.

CLERK.—Gentlemen of the Jury, hearken to an indictment *versus* A. B., the defendant, at the bar.

(*Read the indictment to the Jury.*)

CLERK.—To this indictment, gentlemen of the jury, the defendant has plead not guilty, and for trial hereof has put himself upon his county, which county you are; and you are now sworn well and truly to try the issue. If

he is guilty you will say so, if he is not guilty you will say so, and nothing more.

Gentlemen of the Jury, hearken to your evidence.

Forms for taking the verdict.

CLERK.—Gentlemen of the Jury have you agreed upon a verdict?

(Foreman answers.)

CLERK.—What say you Mr. Foreman, is A. B., the defendant at the bar, guilty of the offence whereof he stands indicted, or not guilty?

(Foreman answers guilty or not guilty as the case may be, and the clerk records the verdict.)

CLERK.—Gentlemen of the Jury, hearken to your verdict as the court hath recorded it. You upon your oaths say that A. B., the defendant at the bar is (or is not, as the case may be) guilty of the offence whereof he stands indicted. So say you, Mr. Foreman, so you all say gentlemen.

Order of court if defendant be found not guilty.

CLERK.—A. B., the court order that you be and you are hereby discharged from your indictment, to go without day.

SENTENCES OF COURT.

For minor offences.

CLERK.—A. B., hearken to your sentence.

The court having considered the offence whereof you stand convicted, do order that you be punished by paying a fine of ——— to the use of the state, (or to the use of C. D. as the case may be) and cost of prosecution, and that you suffer imprisonment in the county jail of the county of ———, for the term of ———, and that you stand committed until this sentence shall have been executed.

(Any part of the above form may be omitted to correspond with the order of court.)

Sentence to hard labor.

CLERK.—A. B., hearken to your sentence as the court hath awarded against you.

The court having considered the offence whereof you stand convicted, do order that you be punished by confinement to hard labor for the term of ———, and that this sentence be executed upon you, in and within the State prison in Thomaston, in the county of Lincoln, and that you stand committed until you be removed in execution of this sentence.

Forms in capital trials.

CLERK.—A. B., hearken to an indictment found against you by the grand inquest for the body of the county of P——.

(Clerk reads the indictment to the prisoner.)

CLERK.—A. B., what say you to this indictment? Are you guilty thereof or not guilty?

PRISONER.—Not guilty.

CLERK.—How will you be tried?

(R. S. Ch. 134, § 18, provides that this form may be dispensed with.)

PRISONER.—By God and my country.

CLERK.—God send you a good deliverance.

CLERK.—A. B., you are now set at the bar to be tried, and those good men whom I shall call are to pass between you and the state of Maine upon your

trial. If you would object to any of them you must do it as they are called, and before they are sworn. You have a right to challenge ten peremptorily, without assigning any reason, and as many more as you have good cause therefor.

The clerk calls a juror who rises when the clerk says "juror look upon the prisoner. Prisoner look upon the juror." If objected to by the prisoner, he says "I challenge," and the juror is set aside, and another is called; and so on, till twelve are selected.

The clerk then calls the first two jurors on his list and administers to them the following oath, viz: You swear that you will well and truly try, and true deliverance make between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God. The same oath is then administered to the other jurors in the order of three, three and then four.

CLERK.—A. B. hold up your right hand.

CLERK.—Gentlemen of the Jury hearken to an indictment found against A. B., the prisoner at the bar.

(Clerk reads the indictment to the Jury.)

CLERK.—To this indictment, gentlemen of the jury, the prisoner has pleaded 'not guilty'; and for trial has put himself on the country, which country you are; and you are here, upon your oaths, to try the cause, and true deliverance make.

(After the jury have agreed on a verdict and returned into court.)

CLERK.—Gentlemen of the jury, have you agreed on a verdict?

ONE OF THE JURY.—We have.

CLERK.—Who shall speak for you gentlemen?

ONE OF THE JURY.—The foreman.

CLERK.—A. B. hold up your right hand. Foreman look upon the prisoner. What say you Mr. Foreman, is A. B., the prisoner at the bar guilty, or not guilty?

FOREMAN.—Guilty, (or not guilty as the case may be.)

CLERK.—Gentlemen of the Jury, hearken to your verdict as the court have recorded it. You upon your oaths do say, that A. B., the prisoner at the bar, is guilty (or not guilty as the case may be.) So you say Mr. Foreman; so Gentlemen you all say,

Recognizances in criminal actions.

You A. B., as principal, and C. D. and E. F. as sureties, severally acknowledge yourselves to be indebted to the state of Maine in the respective sums following, to wit:

You A. B., as principal, in the sum of \$——, and you C. D. and E. F. as sureties, in the sum of \$——, to be levied upon your goods or chattels, lands or tenements, and in want thereof upon your bodies, to the use of the state of Maine, if default be made of the condition, viz:

Condition to appear and answer to an indictment.

The condition of this recognizance is such, that if the said A. B. shall personally appear before our Justice of our —— court next to be holden at D——, within and for the county of P——, on the —— Tuesday of —— next, and answer to an indictment found against him by the grand inquest for the body of this county for the crime of ——, and not depart without license, then this recognizance shall be void, otherwise to remain in full force and virtue.

Condition for appearance of witnesses.

The condition of this recognizance is such that if the said G. H. shall appear at our —— court next to be holden at D—— within and for the county of P——, on the —— Tuesday of —— next, to give

evidence of what he knows relating to an indictment, then and there to be heard and tried between the state of Maine and A. B. for the crime of ———, then this recognizance shall be void, otherwise to remain in full force and virtue.

Condition to prosecute exceptions.

The condition of this recognizance is such, that whereas, at this term of court upon an indictment against the said A. B. for the crime of ———, the jury having returned a verdict of "guilty," the said A. B. has alleged exceptions to the opinion, direction, and judgment of the presiding Judge. Now if the said A. B. shall appear at the next law term of the Supreme Judicial Court, to be holden at B—— within and for the District on ———, and shall then and there in said court produce the papers, enter and prosecute his exceptions, and shall also appear at the term of court in this county at which judgment shall be rendered and shall abide the sentence or order of court, and not depart without license, then this recognizance shall be void, otherwise to remain in full force and virtue.

Condition to keep the peace.

The condition of this recognizance is such, that if the said A. B. shall keep the peace and be of good behaviour towards all the citizens of this state, and more especially towards J. P., for the term of ———, then this recognizance shall be void, otherwise to remain in full force and virtue.

OATHS.

Of grand jurors.

"You, as grand jurors of this county of P——, do solemnly swear, that you will diligently enquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows', and your own, you shall keep secret. You shall present no man for envy, hatred, or malice; nor leave any man unpresented, for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God."

The above oath is administered to the first two jurors, and the following oath to the remainder, viz:

"The same oath which your fellows have taken on their part, you, and each of you, on your part, shall well and truly observe and keep. So help you God."

When any person returned as a grand juror is conscientiously scrupulous of taking an oath, he is allowed to make affirmation, substituting the word "affirm" instead of "swear;" and also the words, "this you do under the pains and penalties of perjury" instead of "so help you God."

Of traverse jurors in criminal cases not capital.

"You swear that you will well and truly try the issue between the state and the defendant (or defendants as the case may be) according to your evidence. So help you God."

Of traverse jurors in capital cases.

"You swear that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God."

Any juror conscientiously scrupulous of taking an oath may affirm, substituting the words "this you do under the pains and penalties of perjury," instead of the words "so help you God."

Of traverse jurores in civil cases.

"You and each of you swear, that in all causes betwixt party and party, that shall be committed to you, you will give a true verdict therein, according to the law and the evidence given you. So help you God."

Or if the Juror affirm.

You affirm, that in all cases betwixt party and party, that shall be committed to you, you will give a true verdict therein according to the law and the evidence given you. This you do under the pains and penalty of perjury.

Of an officer attending a jury.

You swear that you will keep this and all other jurors committed to your charge in some convenient place until they shall have agreed, that you will not suffer any one to speak to them, or speak to them through yourself except by order of court, or to ask them if they have agreed; nor will you permit them to separate until they shall have been discharged from their verdict, otherwise than by order of court. So help you God.

Of officer attending a jury of view.

You swear that you will conduct this jury to the premises in the dispute between the parties to the action now on trial, and permit them to make an examination thereof, that you will keep them under your charge and not hold with them any conversation yourself, or suffer any other person to do so, unless by order of court, (excepting so far as the parties have agreed with each other in court) and that you will return with them so soon as the examination shall be completed. So help you God.

Of witnesses in civil actions.

You swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.

(Or if the witness affirm.)

You affirm that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. This you do under the pains and penalties of perjury.

Of witnesses in criminal actions.

You solemnly swear that the evidence you shall give in the case now in hearing, between the state and the defendant at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God.

(Or if the witness affirm.)

You solemnly affirm that the evidence you shall give in the case now in hearing between the state and the defendant at the bar, shall be the truth, the whole truth, and nothing but the truth. This you do under pains and penalties of perjury.

Of an interpreter.

You swear that you will truly communicate to H. L., a witness in the case now in hearing, what may be communicated to you by or under direction of the court, and to the court and jury, his answers to the same, and well and truly translate and interpret the questions put to, and the answers given by said witness. So help you God.

After the above oath has been administered, the witness must hold up his right hand, and then the clerk repeats to the interpreter the oath in chief and the interpreter repeats to the witness the same, sentence by sentence as received from the clerk.

OCCASIONAL OATHS.

To an account.

"You swear that you will make true answers to all interrogatories relative to your accounts, that may be put to you by and under direction of the court. So help you God."

To any matter in hearing.

"You swear that you will make true answers to such interrogatories relating to the subject now in hearing as shall be put to you by and under direction of the court. So help you God."

Of naturalization.

"I, — — —, do hereby declare that I will support the constitution of the United States, and that I do hereby absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate or Sovereignty whatever, and particularly I do hereby absolutely and entirely remove and abjure all allegiance and fidelity to (Queen of Great Britain and Ireland, as the case may be.) So help me God."

Of an attorney on admission to the bar.

"I, — — — do swear that I will support the constitution of the United States and of this state, so long as I shall continue a citizen thereof. So help me God."

"You solemnly swear that you will do no falsehood, nor consent to the doing of any in court, and if you know of an intention to commit any, you will give knowledge thereof to the Justices of the court or some of them, that it may be prevented; you will not, wittingly or willingly, promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice, but you will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts, as your clients. So help you God."

See R. S., Ch. 79, § 18.

Oath of witness before grand jury.

"You swear that the testimony which you shall give to the grand jury relative to any matters and things which may come before them, shall be the truth, the whole truth, and nothing but the truth. So help you God."

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